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By J. B. Beaver

Robert Harry Inglis  
Feb 7 1887



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THE  
**HISTORY**  
Of the ORIGINE of the  
**FRENCH LAWS.**

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*Translated from the FRENCH.*

By J. B. Esq<sup>r</sup>;

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With a PREFACE and NOTES,  
shewing, The **ANALOGY** of the LAWS  
of the **Antient GAULS** and **BRITONS.**

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**L O N D O N,**

Printed for D. BROWNE, at the *Black Swan*,  
and F. CLAY, at the *Bible*, without *Temple-Bar*.  
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To the Right Honourable

**D A V I D**

*Lord MILSINTOWN.*

MY LORD,



Among all the Improvements and Accomplishments which young Noblemen acquire in their Travels, none is more instructive or serviceable in  
A 2 the

## D E D I C A T I O N.

the Conduct of their Lives, (whether we consider them Abroad or at Home, in Publick or Private Capacities,) than a competent Knowledge of the Laws of Foreign Countries, and the Principles upon which they are grounded.

For this Reason, I doubt not, but your Lordship, while you were in *France*, made it a Part of your Study and Observation, and added it to those Endowments which naturally adorn your Mind, and shew you are descended from Noble and Wise Parents.

This

## DEDICATION.

This is not a Place for your Lordship's Pedigree, or the History of your Ancestors: Let it suffice, that as you are derived on your Mother's Side, from a very Antient Family, remarkable for Wit, and a refin'd Understanding; so by your Noble Father's, you inherit Prudence and Valour: Many of his Ancestors having, with the greatest Reputation, fill'd very considerable Military Employments in the *Low-Countries*, from the Time of the Emperor *Charles V.* down to this Day.

A 3

But



## DEDICATION

But, my Lord, You have no need to look so far back for Examples, to excite you to the Pursuit of Honour and Vertue: Your Father is before your Eyes; whose Titles of *Baron* and *Earl*, are the Rewards of a long Series of Brave and Honourable Actions, conferr'd upon him by our Two last Princes.

To these, my Lord, You are Heir, and your own good Sense and Inclinations assuredly promise, that You will give an Additional Lustre to your Noble Family,  
by

## DEDICATION.

by the Brightness of your  
own Character.

Your Lordship will pardon the Liberty I have taken, in prefixing your Name to this little Treatise, which may serve to Amuse you with a short View of what you have already gone over.

And I beg you will be persuaded, that I have no other Design in it, than to publish the Sence I have of the many Favours conferr'd upon Me by the Earl of *Portmore* and your Self; and the Ambition I have

A 4 of

**DEDICATION.**

of being always confider'd,  
as I really am,

*My Lord,*

*Your Lordship's most Obedient, and*

*Most Humble Servant,*

**J. Beaver.**

**T H E**



# THE P R E F A C E.



*THE Original of the ensuing Discourse, (being an Historical Deduction of the French Laws, from Cæsar's Conquest of the Gauls, to the Modern Times) was first publish'd in French about the Year 1708. and obtain'd the Esteem and Applause of all Knowing and Judicious Persons, as a Work full of exquisite and admirable Learning, and highly necessary for a right Understanding of the French Laws.*

*'Tis true, it at first appear'd without a Name, as those exquisite Institutes of the French Laws, compos'd by Monsieur Argout, also did: But seeing since his Death, it has in divers Impressions, been constantly prefix'd as a Preface or Introduction to those Institutes, we may well presume, both were compos'd*

*posed by the same Hand: And indeed, not only the subject Matter, but the Style and Connection of both Tractates, do manifest an Identity of Thought and Language.*

*Now, as this Treatise is by all acknowledg'd to be of admirable Use, as an Introduction to the Knowledge of the French Laws in particular; so it must be confess'd, with respect both to the Civil and Canon Law in general. The Reader may here trace them from their very Fountains and Originals; whereby the several Authors who have written Systems or Institutes of those Laws, (as Monsieur Domat and others) and in short, the whole Body of the Civil and Canon Law, may be better illustrated and explained.*

*But what chiefly induced the Publishing hereof in English, was the great Analogy or Conformity observed herein, between the Laws or Customs of the Ancient Gauls and Franks; and those of our Britons and Saxons, many of which will here appear to be deriv'd from the same Original. As for Instance,*

*We here find the Ancient Gauls to have been governed by certain \* Usages and Customs, not by any written Law. So we read*

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\* *Cæsar. de bello Gallico. Lib. 5. & 6.*

of the Britons, they had no written Law, but were govern'd by certain Traditional Usages, preserved by means of their Bards and Druids, who were Priests and Judges, as well amongst the Britons as the Gauls: For we have it from good Authority, that in both Nations, the Druids had originally the sole Power of deciding of Rights, and determining Controversies. Which Power continued here, till the time that the Emperor Claudius, having absolutely conquered Britain, by his Edict prohibited the Druids any longer to exercise their Religious Rites\*, &c.

And hence, as Selden observes, it came to pass the † Druids, being prohibited the Exercise of those Rites, such Nations as were govern'd by them in point of Law, viz. the Gauls, Britons, &c. grew regardless of their Authority; and not respecting them as before, became prone to receive and embrace the Roman Law. And this occasioned that Observation of the Poet,

Gallia, Capfidicos, docuit facunda Britannos.  
Juvenal. Sat. 15.

As if he had said, Whereas heretofore the British Druids, taught those of Gaul the

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\* Suetonius in Vita Claudii. Cap. 25.

† Nos. ad Fortesc. p. 12.

Sat. 7.

*Knowledge of their Law ; now the Gauls do instruct the Britons in the Roman Law : And for this Reason, he elsewhere calls Gaul Nutricula Causidicorum.*

*As for the Office of the British Bards, especially of the Chief, called Penkert, Penbeirt or Penbeirdh, the Reader may consult the Laws of Howel Dhaa, i. e. The Good, which, we hear, will shortly be publish'd by the Reverend Dr. Wotton.*

*But to return to the Roman Law. We find the same fully established in this Island, in the Reign of the Emperor Severus : For he kept his Prætorian Court at York ; wherein the fam'd Papinian for some time sat as Judge, having those two great Civilians, Paul and Ulpian for his Assessors\*. And in the Code of the Civil Law †, we have a Rescript or Decree, made at York, in the Name of that Emperor and his Son Antoninus.*

Pag. 10.  
and 11.

*'Tis also observed by our Author, That the same Magistrates, Language and Laws, were at the same time used at York, Cologne, Lyons, Cordoua, and Carthage ; and we may well add, in most other eminent Towns :*

\* Dion. Cassius, in Vita Severi.

† Cod. Lib. 3. Tit. 32. Cap. 1.

and

## The PREFACE.

v

and Cities, where there were Roman Colonies settled: For which the Reader may consult Lipsius de Magnitudine Romani Imperii, Lib. 1. cap. 6. and Velferus de Antiquit. Augustæ Vindehcor. Lib. 2.

And we have no Reason to doubt that the Roman Law was received, nay studied and practised in Justinian's Time, in most Parts of the Roman Empire: But from his Death, which happened about the Year 565. to the Year 1125. it became so neglected and disused in the Western Empire, that we don't find any Person during all that time, that there profess'd it: Nor indeed, could it be otherwise while the Body of it was lost.

But as our Author takes notice, the Emperor Lothair, after near 600 Tears, taking Amalfi in Apulia, found an Old Copy of the Digests or Pandects, and gave it to the Pisans: whence tis called, Litera Pisana; which being afterwards carried to Florence, is to this Day carefully preserved in the Great Duke's Palace, and never brought forth or produced without Lighted Torches and other great Ceremonies\*.

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\* Selden's Preface to his Titles of Honour, Edit. Prim.

And



*And whereas Justinian had by an Edict commanded, that the Civil Law should not be read or taught but at Rome, Berytus; and Constantinople : So Lothair by a like Edict enjoined, That Bologna should be Legum & Juris Schola una & sola\* ; Yet, neither of these Edicts were observed.*

*For as Irnier taught the Civil Law at Bologna, without any regard to the First; so Aro and Placentinus, who immediately succeeded him, read and taught it publicly at Montpellier and Tholouse, contrary to the Second Edict.*

*As to the University of Paris, our Author indeed says, that Pope Honorius III. about the Year 1200. expressly forbid the Study of the Civil Law there; but adds, that his Decree thereupon deserves Examination; which has lately been done by Monsieur Claude Joseph de Ferriere, who has shewn beyond Contradiction, that the Pope's Prohibition related only to Priests and Monks, who were too much addicted to that Study, and apt to neglect their proper Business, the reading and searching of the Holy Scripture.*

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\* Ibid. See Paul Merulas, *Cosmog.* p. 1. lib. 4. c. 23.

*And*

*And tho' this Decree was not then published, the very same Reason induced our King Stephen to put out an Edict against the Study of the Civil Law at Oxford, and to silence Vicarius, who began to profess and teach it in that University, about the Fourteenth Year of his Reign. But his Orders were not followed; for John of Salisbury, a Man of great Note who lived at that time, says, Parum valuit Stephani prohibitio, nam eo magis invaluit virtus Legis, Deo favente, quo eam amplius nitebatur impietas subvertere.*

*This may serve in general, to shew how far the Roman or Civil Law, was antiently regarded both Here and in France. As for particular Laws mention'd in the ensuing Treatise, the Analogy between them and our Saxon Laws, will more fully appear from Dr. Wilkins's Notes on those Laws, lately published; wherein he has compared those Laws with the Burgundian, Ripuarian, Sallick, and other Laws mention'd by our Author; and shewn, that they all help to confirm and illustrate the Laws of this Nation.*

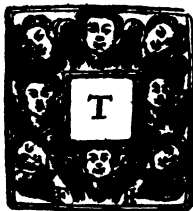
**THE**





# THE HISTORY

Of the ORIGINE of the  
*French LAWS, &c.*



THE Inhabitants of \* Gaul (for *The Design of this Treatise.*  
near 500 Years) before the  
Irruption of the *Franks* into  
that Countrey, were wholly  
govern'd by the Antient Ro-  
*man* Laws, and which after-

wards continued to be observed under the  
Kings of the First and Second Race;  
but mix'd with some Barbarian Customs,  
and the Capitularies of those Kings.

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\* Touching the Antient *Gauls*, &c. see Monsieur  
*Pezron's* Book Of the *Antiquities of Nations* : Where-  
in he shews, the *Gauls*, and *Britons* or *Welsh*,  
to have sprung from the same Original, i. e. *Gomer*  
the Eldest Son of *Japhet* ; and that there was an en-  
tire Conformity between them in their Language,  
Laws, Manners, Habits, &c. [See also *Vertegan*,  
p. 190, &c.] who makes the *Germans*, *Gauls* and *Britons*,  
to have been originally the same People.

B

THE

THE † Troubles that happen'd in the Tenth Century so confounded all those anti-ent *Laws*, that at the Beginning of the *Third* \* *Race*, there was no other Law in *France*, but a very uncertain *Usage*; which the Learned having afterwards improv'd by the Study of the *Roman Law*, their Decisions, mix'd with that *Usage*, formed those *Customs*, which in Process of time were reduced into Writing by Publick Authority. But of later times, the *French Kings* have Enacted several *New Laws*, by their Ordinances or Edicts.

THESE are the Heads I design to treat of in this Discourse; and I hope to be excus'd, if sometimes I make use of probable Conjectures, considering how little

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† 'Twas in the Tenth Century, That the *Danes* and other Northern Rovers over-ran both *France* and *England*; at which time *Fus sepultum, & Leges scriptæ sunt, &c.* [See the 16th of Edward the Confessor's *Laws*.]

\* The Three Races are the *Merovingian*, the *Carlovingian*, and *Capetian*: The First so call'd from *Merovée*, who came out of *Germany*, and settled in *France* about the Year 448: The Second, from *Charles* the Son of *Pepin*, called *Charlemagne*, who began his Reign about the Year 770: The Third, from *Hugh Capet*, who *Anno* 987, succeeded *Lewis the Idle*, being the last Male of the *Carlovingian* Race. From this *Hugh* the present King of *France* is descended in an Uninterrupted Line. [See the *Histories* of *Du Haillan*, *Mezeray*, &c.

has

has been hitherto said or done, to clear up these Points.

I shall call that the *Antient Law*, which was observ'd till the Tenth Century; because since that time the Practice of it has been so interrupted and discontinu'd, that there are hardly any Footsteps of it now remaining; and I shall give that the Name of *New Law*, which follow'd under the Kings of the Third Race: Because tho' it underwent great Alterations, there still remains a Traditional Succession of Laws and Maxims, which may be trac'd down to our Times.

I question whether it will be worth while to look so far back as the Original *Gauls*; and whether it be probable, that after so many Changes, we have any Law left that comes immediately from them.

HOWEVER, I shall here give the Reader out of *Cæsar's Commentaries*, an *Idea* of Comment. Book 6. of the Wars in Gallia. their Antient Manners or Customs, and Civil Government; in which, perhaps, some may discover a great Conformity with those of the latter Times.

" THE whole Countrey of the *Gauls* Antient Govern-ment of the Gauls described.  
 " was originally canton'd into petty States,  
 " independent on each other: (most of  
 " whose Names are still continu'd in those  
 " which were then their \* Capital Cities, as

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\* *Vide Mezeray, Tom. 1. P. 2.*

“ *Paris, Sens, Tours*, and many others.) The  
 “ Persons of greatest Account among them  
 “ were the *Druids*; and the *Knights* : The  
 “ rest of the People liv’d in a sort of Bon-  
 “ dage, could undertake nothing of them-  
 “ selves, were never summon’d to any Pub-  
 “ lick Debate ; nay, many, oppress’d by the  
 “ Severity of their Creditors, or the Ty-  
 “ ranny of the Nobility, surrender’d them-  
 “ selves their Absolute Slaves.

Druids.

“ THE *Druids* had the Management of  
 “ all that concerned Religion and Learn-  
 “ ing, and even the Administration of  
 “ Justice in Criminal Matters, in their  
 “ great Annual Assemblies : Their Power  
 “ was very great, and they were exempted  
 “ from attending the War, or paying any  
 “ Taxes : The Penalty inflicted upon such  
 “ as disobeyed them, was a kind of Excom-  
 “ munication : They were thereby excluded  
 “ from their Sacrifices and Publick Assem-  
 “ blies, and esteemed as Impious and Proflig-  
 “ gate Miscreants : All Men avoided their  
 “ Conversation ; and they were incapable of  
 “ any Degree of Honour, or even of Prose-  
 “ cuting their Rights in Courts of Justice.

Knights.

“ THE *Knights*, for their Parts, were all  
 “ Soldiers, and attended the Wars, which  
 “ between those Petty States happen’d al-  
 “ most every Year. Their greatest Glory

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The Reader may here observe the great Analogy  
 between the antient Customs of the *Gauls* and *Britons*.

“ con-

“ consisted in being courted by a vast Number of Vassals and Dependants, who followed them as occasion requir’d. They never allow’d their Children to appear publicly in their Presence, till they were of Years fit to bear Arms.” All this, and much more, may be seen at large, in the Collection of *German Laws* made by *Gottfried*; wherein the Customs of the *Gauls* and *Germans* are recited in the express Words of *Cæsar* and *Tacitus*, and ranged under different Titles.

As the *Romans* extended their Conquests over the *Gauls*, their Language, Manners, and Laws established themselves among them\*, as in other Countries: For the whole *Roman Empire* was but One Great Body, actuated by the same Spirit, and agreeing in all its Parts in an exact Symmetry, by the mutual Dependence each had upon the other. All the Go-

*Intituled, Collectio Consuet. Legum Imper. Franco-furti, 1613*

*The Roman Law brought first into Gaul.*

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\* Notwithstanding what is here said, we must observe, That the *Romans*, as to Civil and Personal Rights, left every Nation they conquer’d the Liberty of using their own Laws; except in such Cases only, as immediately respected the Government. And therefore our Author’s Meaning here must be, That the *Gauls*, as well as other Conquer’d Nations, finding the *Roman Laws* more Exact in the Decision of Rights, and more Equitable than their own, voluntarily embraced the *Roman Law*. [*See vide post.*]



vernours of Provinces, and Publick Officers, down to the *Apparitors*, were natural-born *Romans*, not to mention the rest of their Retinue, which they called the *Cohort*, and was always very numerous; and their Employments lasted so short a time, that their Residence in the Provinces could not work any considerable Alteration in them. The Farmers of the Publick Revenues were *Romans*, and some, of the Degree of Knighthood. The Legions were made up of † *Romans*: And besides all these, who were in the Provinces upon Publick Service, many *Romans* staid there on their own private Account; as Bankers, Merchants, Husbandmen and Grasers, especially where there was any Colony or Settlement: Nay, abundance, without ever stirring out of *Rome* or *Italy*, got Considerable Fortunes out of the Provinces by the Industry of their Slaves.

ON the other hand, the Natives of the Provinces often went to *Rome*, either as Deputies, to transact Publick Business, or to manage their Private Affairs, or to make their Court, or out of Curiosity; and those of Chief Note

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† *i. e.* Either Native or Emancipated.

among them, claimed a Right of Hospitality from the Principal Citizens, or at least were under their \* Patronage and Protection.

• We may observe from Cicero, Lloy and Tacitus, That 'twas usual for the Nations and Provinces subdued by the Romans, to have the Patronage of some Eminent Roman Citizen; who residing at Rome, and being a Member of the Senate, might, in case of any Oppression of their Governors, apply to such Patron for Relief, who was obliged to represent the Matter to the Senate, and to endeavour a Redress of their Grievances. [See Tacit. Hist. lib. 1, &c.]

But as to the Roman Custom of Patrons and Clients, that was practised among the Romans themselves, even in the Infancy of Rome, by virtue of a Law made by Romulus; as Paulus Manutius in his Book *De Senatu Romano*, has truly observ'd; whose remarkable Words affording us an evident View of the Original of the Feudal Law, (which is generally, tho' without any Foundation, attributed to the Lombards;) I shall therefore give the Curious Reader the Substance of them, viz.

Romulus, *ut erat singulari consilio, &c. cum vereretur ne quid injuriæ Plebs, per inscitiam circumventa, à Senatoribus ferret; indeque Concordiam sine qua diuturnum nihil est, exorta Seditio dissolveret; universæ Civitatis animos quasi necessitudinis vinculo conjunxit, constituit enim Clientelas & Patrocinia: quod erat hujusmodi, ut Plebei Patronum sibi deligerent Senatoribus, quem quisque vellet, & Senatores Plebeiis in clientelam receptis Fidem suam ac studium benignissimè præstarent; Erat autem hæc inter utrosque officiorum vicissitudo, ut Patricii Plebeios ab usu rerum urbanarum imperitos, consilio erudirent, accusatos defenderent, & præsentibus, & absentes omni ope tue-*

Patrons and Clients like our Lords and Tenants.  
Their reciprocal Duties.

tection. Some, who settled at *Rome*, enjoy'd, not only the Freedom of the City, but also were chosen Senators and Magistrates;

*Like our rentur----- E contrà, Clientes ad collocandas Patrono-*  
*Aids pur rum filias, si Parentibus copiae non suppeterent, de suo*  
*Fille mar- conferrent : in aris inopiam gratuitam pecuniam erogar-*  
*rier, &c. rent : ab hostibus in bello captos redimerent ; in Ma-*  
*& ad re- gistratibus & honoribus (petendis) officiosa sedulitate de-*  
*dimen- ducerent. Etiam, Quod si Clientem Patronus, aut Pa-*  
*dum cor- tronum Cliens accusasset, contràve Testimonium dix-*  
*pus Do- isset, aut suffragium tulisset, is Proditionis Lege tene-*  
*mini, &c batur, eumque qui occidisset, piè fecisse, & infernè Jovi*  
*hostiam mactasse putabatur.*

Here you have, not only the Original of *Patrons* and *Clients*, but also the Duties incumbent on each ; the Breach whereof seems to be *Capital*, and no less than *Treason*.

After which, *Paulus Manutius* immediately adds a Passage, which more fully explains the Sence of our Author, as to the whole Provinces and Nations putting themselves under the Patronage and Protection of some Eminent *Roman*, viz.

*Atque hujusmodi Clientelæ quanquam ab initio potissimum Urbane Plebis causa sunt institutæ, tamen per ea quæ consecuta sunt tempora, aucta jam Urbis Ditione, ita (Clientelæ) sunt amplificatæ, ut non Coloniarum solum, sed Gentes etiam, aut Bello victæ, aut Societate Amicitiaque Populo Romano conjunctæ, sese Civium Romanorum in Patrocinio contulerint : Sic M. Marcellum Syracusani, Q. Fabium Allobroges, & alios alii, &c.*

But as to the mutual Duties of *Lords* and *Tenants*, the Reader may please to compare the *Grand Customier* of *Normandy*, Cap. 35. with our *Glanvil*, Lib. 9. Cap. 4, 5, 6, 8, &c. *Bract.* Fol. 78. *Fleta*, Lib. 2. c. 40. & Lib. 3. c. 14. See also *Co. Lit.* 65. 76. 100.

strates; insomuch, that many of the Emperors were Descendants of Provincial Families. In short, they were often made *Romans*, without going out of their own Countrey, by a Grant of the Freedom of the City; which was not only bestow'd on particular Persons, but upon whole Towns: And after the Emperor *Antoninus* had conferr'd that Honour upon all the Subjects of the Empire, there were *Romans* of all Nations.

'Tis true, this General Intercourse did not introduce equal Changes in all the Provinces: The *Romans* made a vast Difference between the *Greeks* and other Nations, which they called *Barbarians*. For, as they were beholden for all their Politeness to the *Greeks*, who also taught them the Liberal Arts and Sciences; they always very much esteemed them: So that the *Romans*, contented with the Dominion or Superiority, suffer'd them to live according to their Antient Laws. They learned the *Greek* Language, to save the *Greeks* the Trouble of speaking *Latin*. They copied them in their Manners; and setting aside what related to the General Administration of the Empire, alter'd more the *Romans*, than the *Romans* the *Greeks*: Whereas they held the *Barbarians* in great Contempt, over whom they had a double Advantage, of Politeness

ness and Power ; and they imagin'd that it was the greatest Instance of Kindness, to oblige them to a Conformity with the *Roman* Way of living. On the contrary, the *Barbarians* did admire the *Romans*, and strove to imitate their manner of Life, as being both more splendid and convenient than their own.

Quære of  
this, and  
see the  
Notes antè

IN this Diversity of Manners was the whole Empire divided: All *Greece* and the East, that is to say, all that Part which devolved to *Alexander's* Successors, used the *Grecian* Language, and Customs ; the rest spoke *Latin*, and followed the *Roman* Laws and Manners. This last Division included almost all that which has since been called the Western Empire, viz. *Africa*, *Mauritania*, *Spain*, the *Gauls*, Part of the *British* Isles, a small Portion of *Germany*, *Rhetia*, *Pannonia*, and *Illyrium*.

THE Truth of the foregoing Remarks will be acknowledg'd by all Persons who are well read in the *Roman* History.

As for such as are not, they will perhaps, hardly believe, that the same Language, Magistrates and Laws were at one and the same time used at *Cologne*, *Tork*,  
*Lyons*,

*Lyon*, *Cordoua* and *Carthage*. But there are some Proofs peculiar to *Gaul*; which shew, that it became at last intirely *Roman*: If we consider, first, the native Original of several of the Emperors, especially in the Fourth Century; next, the Writings of the *Gaulick* Authors, as *Ausonius*, *Salvianus*, and *Sidonius*; then the Names of the *Gauls*, and among the rest, of their Bishops, till about the Eighth Century; as also, the Names of abundance of Cities and Towns, as *Lagny*, *Latiniacus* *ager* or *fundus*, *Percy*, *Patriciacus*, *Savigny*, (or as others pronounce it, *Savigne*), *Sabiniacus*, and many others, which still wear the Badge of their *Roman* Masters: And lastly, the Language the *French* now speak, which has infinitely a greater Mixture of *Latin* Words, than of any other; notwithstanding the Variety of *Northern* People, that succeeded the *Romans* in *Gaul*.

BUT to keep close to my Subject: There can be no doubt the *Roman Law* was observed in *Gaul*, if we reflect, that one of the Four *Prætorian Præfects* resided there; that this Magistrate had the sovereign Administration of Justice in the Emperor's Absence, and was Superior to all the Governors of the Provinces; and that the Titles of several Laws in *Justinian's Code*, shew they were calculated for

Cod. l. 10.  
tit. 38. de  
Municipi-  
bus.

for *Gaul*, or the People of that Countrey.

To all which may be added, that the *Romans* had peaceable Possession of *Gaul* for Five entire Centuries. *Cæsar* completed his Conquests about Fifty Years before the Nativity of our Saviour; and *Merovée*, who was the first *Frenchman* that made any considerable Settlement in *Gaul*, did not fix there till the Year 450. after the Incarnation. Five Hundred Years were sufficient to produce great Alterations in a Countrey, and what hath been so long practis'd, is not easily abolish'd.

LET us then be assur'd, that when the *Franks* subdu'd the *Gauls*, they found them entirely *Romans*; speaking *Latin*, and living according to the *Roman Laws*.

BUT here it will be convenient to observe, what the *Roman Law* was at that Time; for 'tis plain, it could not be *Justinian's*, which was compil'd only for the Use of the Countries under his Dominion, and almost a Hundred Years after the *Franks* broke into the *Gauls*.

What the Roman Law consisted of. Now the *Roman Law* of that time, consisted of the several Constitutions of the Emperors, and Writings of the *Civilians*: These Constitutions were collected

Acted into Three Codes ; the *Gregorian*, the *Hermogenian*, and *Theodosian*, publish'd by the Emperor *Theodosius* the Younger, in 435. which confirm'd the Two Former. Afterwards, the *Novels* of the same *Theodosius* and his Successors were added.

THE Writings of the *Civilians* were such as the *Theodosian Code* authorized ; as, those of *Papinianus*, *Paulus*, *Caius*, *Ulpianus*, *Modestinus*, and others cited by them namely, *Scævola*, *Sabinus*, *Julianus* and *Marcellus*.

By this Restriction, it appears, the Works of the rest of the *Civilians*, some Fragments of which, we meet with in the *Digest*, were either wholly unknown, or of no Credit in the Western Empire. I am farther of Opinion, that the Text of the \*Perpetual Edict, of the † Laws, of

\* The Number of *Pretorian Edicts* growing too great, and many Inconveniencies ensuing thereupon, the Emperor *Adrian* employ'd *Julianus*, a Famous *Civilian*, to make One Edict out of the whole, which was to serve for a Rule in all future Cases. This they called the *Perpetual Edict* ; because the *Prætors* were never after permitted to publish any.

† *Lex est quod populus Romanus Senatorio Magistratu interrogante (veluti Consule) constituebat.*

the



the \* *Plebiscita*, of the † *Senatus Consulta*, and particularly the Text of the || *Twelve Tables*, were at that time utterly lost, or rarely to be met with ; because when *Justinian* had a mind, in the following Century, to form a compleat Body of all the Laws, he took all his Materials out of the Emperors Constitutions, and Works of the *Civilians*. This also appears, by comparing the *Mosaick Law* with the *Roman*, as it was used in the Reign of *Theodosius the Younger* : For it contained only certain Decisions of the Civil Lawyers, and some of the Constitutions taken from the Three Codes , with a small Portion of the *Theodosian Code*, which then, perhaps, was only publish'd.

\* *Plebiscitum est, quod plebs plebeo magistratu interrogante (veluti Tribuno) constituebatur.*

† *Senatus Consultum est, quod Senatus jubet aut constituit.* Instit. lib. 1. tit. 2. par. 4.

|| The Laws of the *Twelve Tables* are so called, from Twelve Tables of Brass, in which they were engraved. They consisted of the chief Maxims of Government, pick'd out of the *Grecian Laws*, the Laws of *Rome* under the Kings, and the Customs of the Place : A most excellent Composition ; having in them (as *Cicero* in his Book *de Oratore*, says) every thing that was useful and good, mentioned in the Books of the Philosophers.

THE

THE most considerable Part therefore of the *Roman Law*, was the antient *Theodosian Code*, which had the good Fortune longest to survive the Ruin of the *Western Empire*; and many believe, it was this only, that was abstractedly call'd the *Roman Law*: And indeed, *Gregory de Tours* makes mention of one *Andarchius*, in the Service of *Sigibert Son of Clotarius the First*, who, he says, was very expert in the *Theodosian Law*.

THE *Franks*, and other barbarous conquering Nations, brought with them a New Law into *Gaul*: But as they had not the use of Letters in their Tongues, so their Laws were only writ in *Latin* by some *Romans*, after they had been settled and converted to the Christian Faith.

AT the time of their first Incurfions, they were govern'd only by meer Customs, transmitted to them by their Ancestors, which served them for a Guide in all their Determinations; and their manner of living affording little occasion for Law-Suits, made them not very exact in their Forms.

*The Laws  
of the Bar-  
barians  
meer Cu-  
stoms.*

ALL

ALL these Nations came from *Germany*, whose Manners are described by *Tacitus* in his History of that Country.

WAR and Hunting was their whole Employment ; and as they had no fix'd Habitation, nor other Goods than Cattle, their common Disputes, arose either from Personal Quarrels or Theft ; and those were decided in the Publick Meetings, either according to the Depositions of Witnesses upon the Spot, or in doubtful Cases, by *Combat*, or the Trials of *Fire* and *Water*.

THE *Romans*, tho' conquer'd by these People, were far from imitating them in any thing, and shew'd the same Aversion to them, as we should to *Tartars* or *Cossacks*. Besides, the *Barbarians*, whose End of Conquest was not Ambition or Glory, but to Plunder and live more at Large than they could in their own wretched Countries, were contented with the Dominion, and suffer'd the *Romans* to live as they had done before.

ON the contrary, they themselves imitated the *Romans*, whom their Forefathers had long before valued and admir'd.

THUS their first Kings gave their Officers the same Titles as the *Romans*, they call'd the Governors of their Provinces,  
*Dukes*,

*Dukes, Earls, and Vicars*; and those who served about their Persons, *Chancellors, Refrendaries, Chamberlains*, and in general *Palatins*: They thought it Honourable to be stiled *Consuls* and *Patricians*, and were fond of being called *Glorious* \* and *Illustrious*; which last, were no more than ordinary Titles, commonly bestow'd by the *Romans* upon certain Magistrates, and those not of the highest Distinction,

THEY had the same Species of Coin as the *Romans*, that is, Gold † Shillings, and Silver Pence; and their Kings represented upon it, with much the same Ornaments as the Emperors.

IN a Word, the Good Sense and Politeness of the Conquered, soon got the better of the Conquerors, especially where Arts and Sciences were concern'd.

\* See for this the *Novella* of *Justinian*, Coll. 2. Tit. 1. Nov. 7. Tit. 2. Nov. 8. & *alibi*. That the Titles of *Gloriosissimi, Illustrissimi, &c.* were apply'd as well to the *Prætors, Quæstors* and the Ordinary Judges, as the Emperors themselves: And even their *Chartularies* or Secretaries, were stiled *Excellsi* and *Magnificentissimi*, as in the same *Novella*, Tit. 2. Nov. 8. cap. 7. *Magnificentissimo Chartulario, &c.*

† *Solidi ex auro, Denarii ex argento.*

C

As

As this Conformity in Manners grew on an Association and Confederacy; so it was much increased by the Conversion of the *Barbarians* to the Christian Faith, who now began to reverence the Bishops and Priests as Holy Men, whom they before admir'd for their Learning and Abilities; and from thence, the *Romans* entertain'd better Thoughts of, and obey'd their Conquerors with greater cheerfulness.

But still, they were Two different Nations in Language, Habit, and Customs; which *Distinction* seems to have lasted in *France*, through the Two first Races of their Kings; but it chiefly appear'd in their Laws: And as it was incumbent on the Magistrate, to render Justice to every Man, according to the Law under which he was Born, or had made Choice of, (for that was allow'd;) it was thought advisable, to reduce the Laws, or rather the Customs of the *Barbarians* into Writing.

THESE Laws are still extant, in a Volume entitled, *A Code of the Ancient Laws* †; containing those of the *Visigoths*,

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† By Frederick Lindenbrogius.

an Edict of *Theodosius* King of *Italy*, the Laws of the *Burgundians*, the *Salick* and *Ripuerian* (which are properly the Laws of the *Franks*;) the Law of the *Germans*, that is, of the Inhabitants of *Alsatia* and the Upper *Palatinate*; the Laws of the *Bavarians*, *Saxons*, *English* and *Frisons*; the Laws of the *Lombards*, (which are far more considerable than the rest;) the Capitulars of *Charlemagne*, and the Constitutions of the Kings of *Naples* and *Sicily*.

It would be an endless Labour to give a particular Account of each of these Laws: I shall therefore confine my self to those that have the nearest Relation to *France*; observing by the way, that there are none of them, even those made for the most distant Nations, but may be of some use, either in History or the Civil Law; many of them being lick'd into the Shape they are now in by the Command of the *French* Kings. Besides, all those *Northern* People, swarming from the same Hive, and keeping a frequent Correspondence together, observ'd a great Conformity of Manners, as before is remark'd.

C 2

I shall

I shall speak of these Laws, according to the Order of Time wherein they were committed to Writing, that is, as the several Nations were conquer'd and establish'd.

*Laws of  
the Visi-  
goths.*

THOSE of the greatest Antiquity, are the Laws of the *Visigoths*, who possess'd *Spain*, and a great part of *Aquitain* in *Gaul*. And as their Kingdom was the first establish'd; so it seems, their Laws were written before any of the other *Barbarians*.

THEY were first digested by *Evarix*, who began his Reign in 466. but being adapted only to the *Gothick* Constitution, his Son *Alarick* commanded *Avien* his Chancellor, to abridge the *Theodosian* Code for the use of the *Romans*, which he published at *Aire* in *Gascony*. This Abridgment *Avien* illustrated with Notes, by way of Gloss; or at least, put his Name to them for their greater Credit; for we have no sufficient Proof that he was the Author of them. However, we may depend, that this Abridgment was authoriz'd by the Bishops and Nobles in 506; and was design'd to comprehend all the *Roman* Law then in use, which was  
taken,

taken, as we have observ'd; both out of the *Three Codes*, and the Writings of the *Civilians*.

ANOTHER *Abstract* was afterwards made of this *Code*, consisting only of *Avien's* Remarks, with the Title of *Scintilla*.

THE *Gothick* Law being much enlarged by succeeding Kings, when sufficient Provision was made for most Cases, it was put into *Twelve Books*, in imitation, as some say, of *Justinian's Code*, altho' there is no resemblance in the Disposition of the Materials; and it was ordained, That this Collection should be the only Law observed by the Subjects of the *Gothick* Kings, of what Nation soever they were.

By this means, the *Roman* Law came to be extinct in *Spain*, or rather blended with the *Gothick*: For it was from the *Roman*, they took the greatest Part of what was added to their own Antient Laws. This Collection was called the *Book of the Gothick Laws*; and King *Egica*, who reigned till 701, about Twelve Years before the *Moors* invaded *Spain*, got it confirm'd by the Bishops in the Sixteenth Council of *Toledo*, held in the



Year 693. It has the Names of several Kings prefix'd; but all since *Rearedus*, who was their first Catholick King.

THE Laws in use before, were called the *Antient Laws*, but without the Sanction of any King's Name, not even of *Evarix*; and probably they were all suppressed in Detestation of *Arianism*. These Antient Laws separately taken, bear a great Analogy with those of the other *Barbarians*; and comprehend all the *Gothick* Customs, reduced into Writing by order of King *Evarix*; but considered with the Improvements they receiv'd, are undoubtedly the most Copious, as well as most Wholesome, of all the Laws in use among the Barbarous Nations, and point out the Judicial Forms observed in *Justinian's* Time, better than his own Books. This is the Ground-work of the *Spanish* Laws, and it prevail'd in *Languedoc*, long after the Dissolution of the *Gothick* Government there, as is manifest by the Second Council of *Troyes*, held under Pope *John* the Eighth, in the Year 878.

Laws of  
the Bur-  
gundians.

THE *Burgundian* Laws were reform'd by *Gondebaud*, one of their last Kings, and published at *Lions*, the Twenty ninth of *March*, 501. the Second Year of his Reign; and

and from his Name they are called *Gombettes*, altho' he was not the first Inventor, as he himself confesses: And to confirm it, *Gregory de Tours* says, *Gondebaud* introduced more gentle Laws, to protect the *Romans* from being misus'd by the *Burgundians*. There are some *Addenda* that reach up to 520 or thereabouts, Ten or Twelve Years before the Expiration of the *Burgundian* Government.

THIS Law of *Gondebaud* makes mention of the *Roman Law*: From whence 'tis plain, the Name of *Barbarian* was then no Reflection, since the *Burgundians* themselves, for whose sake it was made, are therein so call'd, by way of Distinction from the *Romans*. But as the Countries under the Dominion of the *Burgundians*, were near a Fourth Part of *France*, so no doubt, this was ingrafted into the Body of the *French Laws*.

As to the *Salick Law*, which was peculiar to the *Franks*, the Preface thereto Laws of the Franks. says, it was wrote \* before they pass'd the

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\* But this is very much doubted, and directly contradicted by our *English* Historians. *Vide infra*.

Vide the  
Notes ante

*Rhine*; and the † Places of their Meetings, with the Names of the Four ‖ Sages who were its Authors, are therein mention'd: And tho' the Veracity of this History is called in question, I thought it the safest way to stick to the Edition we have, without taking the Pains to examine, whether this Law was *then* first digested or projected.

It is therein said, to have received its Authority under *Childebert* and *Clotharius*, Sons of *Clovis*: And it expressly declares, that every thing in the antient Customs of the *Franks* relishing of Paganism, should thereby be utterly abolished.

OF this Law we have Two Copies, the same in Sense, but very different in Words. The Oldest, which was also the first printed, has in most Articles some Barbarous Words, denoting the Place of

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† In Places called *Salzbaim*, *Bodobaim*, *Widobaim*, on the other Side of the *Rhine*. [See the Preface to the *Salick Law*.]

‖ Having out of many chosen Four, namely, *Wifogastus*, *Bodogastus*, *Salogastus*, *Widogastus*. [See the Preface to the *Salick Law*, and Quære if these Names are not forg'd.]

every

every particular Decision, or the Sum of the Fines adjudged upon each Case, as Monsieur *Vaudelin*, Official of *Tournay*, understands it in his Treatise of the *Sack Law*.

THE other Copy, is the Edition of *Charlemagne*, and is in the Code of the Antient Laws; at the End of which are certain *Addenda*, intituled, The Decrees of *Childebert* and *Clothair*; being the Result of the † Solemn Meetings, held Annually on the First of *March*.

THE

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† These Annual Solemn Meetings seem to have been in Nature of our *Parliaments*, and were generally practised by most of the Northern Nations: Thus here in *England*, antecedent to the Conquest, the Practice was to hold a General Solemn Assembly, called *Populi Conventus*, or *Folk-mote*, twice yearly, viz. on the Kalends of *May*, and the Kalends of *October*, wherein Grievances were redress'd, and Laws and Provisions made for the good Government of the Kingdom; and in them were elected and constituted, all the great Officers of the Kingdom, both Civil and Military, as appears by the Laws of *Edward the Confessor*, Cap. 35.

Besides which, we may observe, That these Solemn Annual Assemblies, were stated and certain, and did not depend on the King's Writ of Summons, or other Royal Mandate, (as *Parliaments* now do;) and therefore the Statute of *Ed. I. Cap. 1* which says, *Parliaments shall be held twice Yearly*; seems to respect this antient Practice, and the common

Laws of  
the Ri-  
puarians.

THE *Ripuarian*, is in a manner, no-  
thing else but a Repetition of the *Salick*  
*Law*: Both were made for the Use of the  
*Franks*; the first, 'tis thought, for the  
People inhabiting between the *Loire* and  
the *Meuse*; and the latter, for those be-  
tween the *Meuse* and the *Rhine*. *Theoda-*  
*rick*, being at *Chalons* upon *Marne*, cau-  
sed the Laws of the *Ripuarians*, *Germans*  
and *Bavarians*, all under his Obedience,  
to be reform'd and corrected, especially,  
as far as they were repugnant to the  
Christian Religion. After him, *Childebert*,  
and then *Clothair* made farther Amend-  
ments; and lastly, *Dagobert* renew'd, and  
with the Assistance of Four || Eminent  
Men, brought them to that Perfection in  
which they are.

Laws of the  
Barbari-  
ans in ge-  
neral.

THESE were the Laws of the *Barba-*  
*rians*, which properly relate to the pre-

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common Custom of the Realm before the Con-  
quest; And the following Words [or often if need  
be] only gave the King a Power to call other  
Parliaments by Summons whenever the necessary  
Affairs of the Kingdom required it.

|| *Claudian*, *Chaudin*, *Indomagnus*, *Agilulfus*. [Vid.  
Cod. Leg. Antiq. Edit. per Fred. Lyndenbrogium.  
Præf. Leg. Ripuar.]

sent

from *France*; and it may not be amiss, (after having told you what is most remarkable in the Original of each of them) to touch briefly upon the whole, and give a general *Idea* of their Tenour or Contents, and their Style or Method, in order to know of what use and service they may be to Us.

We must not let the Word *Law* deceive, and persuade us, that these were the Result of Learned Mens Consultations, or the Fruits of a consummate Prudence, as the Laws of the *Athenians* and *Lacedaemonians*: No, they were, properly speaking, no more than Customs that obtain'd among the People, and were afterwards approv'd and recorded by their wisest and most experient'd Men, in their judicial Decisions, and followed by the rest in all their Judgments. This is plain, from the antient Copies of the *Salick Law*, which nominate in barbarous Terms, the Places where such Judgments were given, and sometimes the Quality or Nature of the Fact.

THESE Laws, notwithstanding, were afterwards digested into Order, by Publick Authority, and had not only the *Fiat* of the Kings, but Approbation of the People,

ple, at least of their Representatives : Therefore the *Salick Law* is called the *Covenant* or † *Treaty of the Salick Law* ; and that of the *Burgundians*, has the Names of Thirty || Earls to it, who promised for themselves and their Descendants to keep and observe it.

*Their Contents.*

THE Matters they chiefly treat of, are Criminal, and such as are most incident to Barbarous and Savage People, as Robberies, Murders, Injuries, Insults, and all manner of Violence : There is little said of Successions, Inheritances, or Contracts.

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† *Pactum, Tractatus.*

Sig. <i>Abgaris</i> , Com.	Sig. <i>Sigonis</i> , Com.
Sig. <i>Aunemundi</i> , Com.	Sig. <i>Fredemundi</i> , Com.
Sig. <i>Unmani</i> , Com.	Sig. <i>Wanabarii</i> , Com.
Sig. <i>Hildeulfi</i> , Com.	Sig. <i>Wilsila</i> , Com.
Sig. <i>Hildegerni</i> , Com.	Sig. <i>Sigiswaldi</i> , Com.
Sig. <i>Usgildi</i> , Com.	Sig. <i>Sonia</i> , Com.
Sig. <i>Walesti</i> , Com.	Sig. <i>Godemundi</i> , Com.
Sig. <i>Andemundi</i> , Com.	Sig. <i>Wademeris</i> , Com.
Sig. <i>Audahari</i> , Com.	Sig. <i>Wadabameris</i> , Com.
Sig. <i>Amgarbei</i> , Com.	Sig. <i>Silvani</i> , Com.
Sig. <i>Auderici</i> , Com.	Sig. <i>Goma</i> , Com.
Sig. <i>Aunemundi</i> , Com.	Sig. <i>Fastila</i> , Com.
Sig. <i>Wilmerni</i> , Com.	Sig. <i>Suldi</i> , Com.
Sig. <i>Conigiseli</i> , Com.	Sig. <i>Gundeulfi</i> , Com.
Sig. <i>Comarici</i> , Com.	Sig. <i>Offini</i> , Com.
Sig. <i>Wallaerii</i> , Com.	Sig. <i>Walarimi</i> , Com.

IN

In the Laws of such of those Nations as had been lately conquer'd, and converted to the Faith, I mean the  *Germans, Saxons, and Bavarians*, there are particular Punishments assign'd for Rebellion and Sacrilege: From whence we may gather, that neither the Civil, nor Ecclesiastical Magistrates, were secure from the Insults of the  *Barbarians*.

SOMETHING there is also to be discovered of the Form of their Judgments; They met together in numerous Assemblies, at which all Persons of Distinction were bound to appear, upon certain Penalties, as the Laws of the  *Bavarians* declare. The Proofs made use of, were rather  *viva voce*, than by written Evidence, because the Art of † Writing, was then unknown; and in default of due Proof, they granted the  *Combat*, or a Trial by the  *Elements*. The Combat, was a  *Duel*, fought either between the Parties themselves, or their

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† Surely Writing was then known and practis'd. And see hereafter another Reason assigned; and indeed the best Reason seems to be, because the Truth would better appear  *viva voce*, than by any written Evidence. [ See Sir Matt. Hale's  *History of the Law*, Cap. ult. ]

Vid. Cod. Leg. Antiq.  *L.B. Baiuvariorum*, Tit. 15.  *Ut placita fiant per Kalendas, &c.*

Cham-



Champions, within Lists appointed by the Judges. The Trial by the Elements, was either *Scalding Water*; into which the accused put his Arm a certain depth; or *Cold Water*, into which he was plung'd, to see if he would sink: And sometimes the Trial was made by a *Red-hot Iron*, which he was to carry so many Yards, in his bare Hand: Then it was bound and seal'd up; and after some Days, unbound, to see what Effect the Fire had produc'd.

These Trials lasted many Ages, and were so currently received, that they were call'd *God's Judgments*; and for that Reason perform'd with Church-Ceremonies: the Forms of which, and Prayers used on such Occasions, and the Exorcisms of *Fire and Water*, are still to be seen: So Ignorant were they in those Times, as to believe, that God would work a Miracle in favour of Innocence; and the many Instances of Success mention'd in History, helped to confirm them in that Belief. However, 'tis certain they were not able to invent a better, or more convenient Method to determine in Cases of Intricacy, and where their own Skill failed.

THIS

This is called in the Canons † *Vulgar Purgation*, and ever condemned by the Church of Rome, notwithstanding the Influence of Common Practice: 'Tis called *Vulgar*, to distinguish it from *Canonical Purgation*, which was done only by Oath.

The Nature of the Penalties inflicted by these Laws is no less remarkable than the rest, most of them being Pecuniary; Or, where the Convict was not able to pay, a Corporal Punishment: Scarce any were Capital, but Crimes of State. Those Penalties were called *Compositions*; being only a Tax of Costs and Damages, made with surprising Exactness. There are an Hundred and sixty four Articles in that of the *Prisons* only; which is one of the

† These kinds of *Vulgar Purgation* were in use in England till the time of *Hen. III.* They were called *Fire and Water Ordeals*. *Queen Emma*, Mother of *Edward the Confessor*, was tried by the First, passing blindfold over a certain Number of hot glowing Plough-shares, with a Success worthy of her Chastity. An Example of the Second kind, we have in the Reign of *William II.* who suspecting a Company of Fellows to have stolen his Deer, enjoined them to carry burning Irons; which they did without Hurt. And the King being told of it, replied, *Quid est istud? Deus est iustus Judex; percat qui deinceps hoc crediderit.* *Hadmerus.*

short.

shortest : Tis properly, a Tariff of all kinds of Wounds, in which the several Parts of the Body are enumerated, and even those which ought to have been overlook'd, and every way in which they may be hurt, set down, with the several Dimensions of each Wound. For Example ; the Maiming of a Hand is taxed in so many different Articles ; as, the Fourth, Third, Second, or First Finger cut off ; and a difference made in the Penalty, if it be a Thumb, Fore-Finger, Middle-Finger, and so of the rest : Nay, the several Joints of each Finger have their several Fines. They also distinguish, if the Part be entirely cut off, or hanging to the rest of the Body ; and if a Wound only, then the Length, Breadth and Depth are fully described. Among the rest, there is a particular Tax upon Wounds of the Head, when the Skull is broken, which seems very extraordinary ; but yet is repeated in many of their Laws : It is, \* that if a Piece of the Skull be broken off, big enough to make a Shield sound,

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\* *Si quis in Capite, vel in quocunque libet membro plagatus fuerit, & os exinde, exierit quod super viam 12 pedum in scuto jactum sonaverit 36 sol. factum ejus culp. jud.* [See the *Riparian Laws*, Cap. 68. de Offe, &c.]

being

being cast into it at the Distance of twelve Paces, the Offender shall pay such a Fine.

OPPROBRIOUS Words are tax'd with the same Exactness: And hence we may learn, what Words were accounted infamous in those times.

SOME may think it hardly worth while now a-days to take notice of several things that are particulariz'd in those Laws. There is provision made to punish such as shall stop another in a Road; such as uncover a † Woman to affront her; those who dig up a Dead Corpse to plunder it; and him who skins another Man's Horse. In short, there are particular Articles against stealing all sorts of Beasts, down to Dogs, the different Kinds of which are therein specified. I thought it would not be altogether useless, to enter into this brief Detail, how

† Si qua libera femina virgo vadit in itinere suo inter duas Villas, & obviavit eam aliquis, & per rap-  
tum denudat caput ejus, cum vi. Sol. componat; -----

----- Et si ejus Vestimenta levaverit, ut usque ad  
genicula denudet, cum vi. Solid. componat; & si eam  
denudaverit ut genitalia ejus appareant vel posteriora,  
cum xii. Solid. componat. [Lex Alman. Tit. 58. De  
eo qui mulierem, &c.

D

low

low soever it seems, in order to give some *Idea* of those Laws, as well as a Notion of the People for whom they were ordained.

*Their Style.*

THE Style in which they are wrote, is so plain and succinct, that they would be easily understood, if they were not full of Barbarous Terms, which have crept in, either for want of proper *Latin* Words, or by way of Explanation: And this is another clear Proof of my Assertion, that *these Barbarians* † wrote nothing in their own Language; for certainly, if they had, those Laws might have been much more

† The Reason why the German Nations did not Write their Laws, was (says *Spelman*) because they were originally a *Grecian* Colony, coming out of *Lacedemon*, and the Territory of *Sparta*; where *Lycurgus* being King, ordained, That their Laws should not be Written, but Imprinted in every Man's Memory: And therefore they were made Short and Summary. [*Spelm. of the Terms*, Cap. 8.]

And Monsieur *Pezron*, in his Treatise of the *Antiquities of Nations*, Lib. i. c. 17. has with great probability of Truth, endeavour'd to prove, That the *Spartans* or *Lacedemonians* originally sprung from the *Celts*: From whence also, both the *Antient Gauls*, and our *Britons* were descended. He, in the same Treatise, shews their Analogy or Conformity in Manners, Customs and Laws; and particularly, of having their Laws unwritten, and preserving them only by means of their *Druids*, &c.

com-

commodiously wrote in the *German Language*, than in *Latin*, stuffed with *German Terms*. Yet, it appears there was Writing in the *Teutonick Tongue*, an Age or two after these Laws were digested : For not to mention the Ancient *Version* of the Gospels, of which there are some Fragments in the Inscriptions of *Gruter*, we have the Laws of the *Anglo-Saxons*, wrote in their *Vulgar Tongue*, from the Beginning of the Reign of † King *Ina*, in 712. to the End of that of *Canutus the Dane*, in the Year 1035. These, by the way, have a great Affinity to the rest of the *Barbarian Laws*; and were also enacted in the Assemblies of their Bishops and Elders.

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† We have also lately Published, by the Reverend Mr. *Wilkins*, the Laws of divers *Saxon Kings*, antecedent to those of King *Ina* : viz. The Laws of *Æthelbirht*; who began to reign, as *Bede* says, Anno 613. or according to the *Saxon Chronology*, 618. Those of King *Lorbarius*; who, as *Bede* says, began Anno 673. or as others, 675. And those of King *Wihfred*, who began about the Year 691. All which were Kings of *Kent*, before the Union of the *Heptarchy*, under King *Egbert*. And no doubt, other *Saxon* and *British* Princes before these, Published divers Laws; as may be Instanced from the Laws of *Howel Dha*, which as we hear, will speedily be published by the Reverend Dr. *Wotton*.

THE *Gothick* Laws are in a purer *Latin* Dialect, according to the Learning of those Times, than any of the rest; that is, they have fewer Barbarous Expressions, altho' more Phrases and superfluous Words.

Laws of  
the Franks  
under the  
First Race.

Thus 'tis easily known, what Laws were in force in *France*, under the Kings of the First Race. The *Franks*, who were Masters, observ'd the *Salick*; the *Burgundians*, the *Gombette*; the *Goths*, who settled in great Numbers in the Provinces on the other side of the *Loire*, followed the *Gothick* Laws, and all the rest, the *Roman*; which the Church-Men universally follow'd, of what Nation soever they were: 'Tis true, there were few Ecclesiasticks, but what were *Romans*; but had it been otherwise, their Interest was to cultivate that Law, for the sake of the great Privileges, and Immunities granted them by the Constitutions of the Emperors. Besides this, they were obliged to obey the *Canon Law*; that is, such Rules of the Councils, as are compris'd in the Antient Code of the Canons of the *Universal Church*, and some Decisions of the Popes, who were often consulted by the Bishops.

THE

THE *Barbarians*, and even the *Franks* themselves, were frequently forced to have recourse to the *Roman Law*, because their own was deficient in many Cases. Thus, *Agathias* says, the *Franks* were directed by the *Roman Law* in their Contracts and Marriages. And *Aimonius* relates, that in the time of *Dagobert*, the Children of *Sadregefile*, Duke of *Acquitain*, were, in pursuance of the *Roman Law*, excluded from his Inheritance, for not revenging their Fathers Death. Besides, it is natural to suppose, that those who drew up the Publick Instruments and Writings, being all *Clerks* or *Monks*, as *Marculfus*, whose Formularies we have, adapted them as much they cou'd to their Law and Style: So that the *Roman Law* was universally observed through all *France*, under the Kings of the First Race, and never thrown aside, but when it cross'd some *Barbarian* Law in Force.

Now whoever has a mind to see an Abridgment of these Laws in their greatest Lustre, together with the State of *France* under the First Race, their manner of administering Justice, and Government; let him look into the History wrote by *M. Cordemoi*, at the End of King *Dagobert's* Reign.

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THE



*Laws of the  
Franks  
under the  
Second  
Race.*

THE Emperor *Charlemagne*, having reunited all the Conquests of the *Franks*, *Burgundians*, *Goths* and *Lombards* under his Empire, suffered each Nation to enjoy their own Laws; and had them all reviv'd, through his great Care that every thing should be administred according to Rule and good Order: Perhaps, 'tis to him we are indebted for those Copies that have been transmitted unto us.

IN the Year 788, he order'd the *Theodosian* Code to be Copy'd and Publish'd, according to the Edition of *Alarick*, King of the *Visigoths*; and by means of this Edition, we have all the *Theodosian* Code, or rather, an Abridgment of all it contain'd: For, comparing it with that publish'd by *Theodosius* himself, which was much larger, we have but half of it. In the Year 798, *Charlemagne* had the *Salick* Law transcribed, and added several Articles thereto: In 803, *Louis the Debonair* likewise made some Additions. So that the same Law was in use, as well under the Kings of the Second Race, as of the First: The only Addition to them, was the *Capitulars*, which are General Laws, and deserve carefully to be examined.

IN

In order to which, we must understand, <sup>The Capitulars.</sup> the Kings of the First Race, for many Years, held a great Assembly on the First Day of March; in which, all Publick Affairs were debated, and Mutual Presents made between the Prince and People. <sup>Vide antè.</sup> This they call'd the Field of \* Mars: A Name long before in use under the Roman Emperors; to signify a Military Congress or Meeting. The Franks held it in the open Air, for want of Buildings large enough to hold them; or rather, because it was customary among the Germans in their own Country, where they had no other Dwellings but Caverns and scatter'd Huts. It was, probably, this Custom of Meeting in the Field to hold these Assemblies, that fix'd the time of keeping them to the End of the Winter, which had confin'd them to their Habitations; and before Summer, that they might employ it wholly to execute the Resolutions of the General Council: For War was the Principal Subject of their Debates.

This Field of Mars, through the Indolence and Inactivity of the succeeding Dronish

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\* From the Roman *Campus Martius*.

Kings, dwindled into a mere Ceremony; and *Pepin* changed the Day to the First of May: After his Time, it was uncertain, altho' the Annual Meetings were regularly kept up.

THIS Assembly consisted of the Chiefs in Church and State, as of *Bishops, Abbots and Earls*; and I am apt to believe, that all those that were *Franks*, had a Right of coming to it. The Question was propounded by the King; who, after it had been freely debated, pronounced the Definitive Sentence or Resolution. The Result of these Meetings was put into Writing, and every Bishop and Earl obliged to take a Copy from the *Chancellor*, for the Direction of their Inferior Officers, and that no Man might pretend Ignorance. As the Questions and Resolutions were put into a short Form, under several Heads, they were called *Chapters*; and Collections of many Chapters, *Capitulars* †.

THE Capitulars, I think, ought to be distinguished according to their Subjects: Those relating to Church-Affairs, which

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† See the Preface of Monsieur *Baluze* upon this Subject.

are

are very numerous, are really *Canons*; as being Rules establish'd by Bishops lawfully assembled: Therefore most part of those Assemblies, are reckon'd as Councils. Those Capitulars which treat of Secular, but General Matters, are truly Laws: And such as refer to particular Persons and Cases, are to be considered only as Private Rules.

We have still a great many Capitulars of the Kings of the Two first Races; from *Childebert* Son of *Glovis*, to *Charles the Simple*: The greatest part are of *Charlemagne* and *Louis the Debonair*; which, till now, were no where to be found, but in the Collection of Abbot \* *Ansgise*, and *Benedict* || the Deacon. At present, we have the Capitulars entire, in the same Order of Writing and Time, as they were drawn up in each Assembly. They were thus published by *M. Baluze*, in 1677. with an ample Preface, and very Learned Remarks on the whole. He hath also put in its proper Place, viz. at the End of the Capitulars of *Louis the Debonair*, *Ansgise's* and *Benedict's* Compilation. It is

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\* Afterwards Bishop of Sens.

|| Deacon of the Church of Mayence.

divided

divided into Seven Books. The Four first, were composed by *Angels* in 817, for the better Preservation (as he says) of the Capitulars, which were in loose Sheets. In the Two first Books, he places those of *Charlemagne*: The First contains Ecclesiastical, and the Second Secular Matters. In the next Two Books, the Capitulars of *Louis the Debonair* and his Son (*Luit*) *Lothair*: In the Third, the Capitulars relating to Ecclesiastical, and in the Fourth Book, those relating to Secular Matters. The other Three, were compiled by *Benedict*, Deacon, of the Church of *Mentz*, about 846, and contain more Capitulars of the same Princes, omitted by *Angels*, either designedly or for want of knowing where to find them, and which *Benedict* recover'd in several Places; particularly the Archives of his own Church to which

THERE are just Grounds to accuse either *Benedict*, or those whose Memoirs he hath compil'd, of not having been so exact as they ought, in their Choice of what Materials they have inserted in those Capitulars: For at the Beginning of the Sixth Book, we find Fifty three Articles taken

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† *Mayence*.

from

from the Law of *Moses*, which certainly did not suit with either *Charlemagne's* Time or Countrey. After these Seven Books, are some Capitulars of the Emperour *Louis the Debonair*, concerning Ecclesiastical Regulations, discover'd since *Benedict's* Collection, and divided into Four *Addenda*; the First of which, merely concerns the Monastick Discipline.

THE Authority of the Capitulars, must needs have been very great, being Enacted by the Advice of the Nobles, and Consent of the whole Nation; so that they were in force throughout the whole *French* Empire, that is, almost all over *Europe*: Especially under *Charlemagne*, *Louis the Debonair* and his Children. Besides the Pains taken to inculcate them into the Minds of the People, it was a chief Branch of the Duty of those Ministers called *Missi Dominici*, to see them duly executed in the Provinces under their Charge. Nay, the Capitulars were a long time after esteemed Laws, as appears by the Letters of *Ives de Chartres*, the Decretals of *Innocent III.* and the Decree of *Gratian*, where-

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A kind of Surveyors or Commissaries, sent by the Prince to inspect the Government of the Provinces.

in

in many of them are inserted. This was the State of the Law of *France*, under the Second Race of our Kings ; when the Capitulars, the *Salick* Law, and the Laws of each particular People, but especially the *Romans*, were in use.

*The Roman Law under the Second Race.*

THE Care those Princes took, to preserve the Use of the *Roman* Law, is manifest, by an Article of the Capitulars of *Charles the Bald*; wherein, after the Penalty fix'd upon False Measures, 'tis provided, *That in all the Provinces subject to the Roman Law, the Delinquent should be punish'd according to that Law*; adding, *That neither He, nor his Predecessors, had ever design'd to Enact any thing repugnant to it*: Which he often repeats in the same Edict. Besides, the *Roman* Law was equally useful to those who were not *Romans*, as under the First Race of our Kings: For the Capitulars, which were the only *New* Laws, contain very little of the Fundamental Maxims and Principles of Law. The greatest part of them relate only to Church-Discipline; insomuch, that many *Canons* of the Antient Councils, are transcribed among them. Those which concern Temporal Matters, often relate only to Private Cases, for which they were calculated. Others, are plainly but Instructions and Minutes, for the Commissioners

ners sent into the Provinces. The few remaining General Articles, are very defective Laws: They are rather Exhortations to Virtue, than Penal Laws. And as 'tis known, the Authors were Ecclesiasticks, 'tis natural enough to think, they did not sufficiently distinguish between the Style used in Laws, which command and force Obedience, and that of Charitable Exhortations and Moral Precepts. So that it was necessary to have recourse to the *Roman Law*, in Matters of Right; especially Contracts and Conditions: For most of their Disputes were about Vassals.

HERE follows a Memorable Instance of the Laws used in *France*, under the Second Race of our Kings. *Adrivaldus*, a Monk of the Monastery of *St. Benedict upon Loire*, who Flourish'd in the Time of *Charles the Bald*, tells us, That there was a Dispute between the *Patrons* of that Convent, and that of *St. Dennis*, concerning some Vassals: To decide which, a Plea was held before One *Bishop*, and One\* *Earl*

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\* An Earl, in the Signification of *Comes* or *Comte*, was not originally a Degree of Dignity, as it is now, but of Office and Judicature. [*Spelman of Feuds, &c. Cap. 6.*] Or rather, all *Dignities* imply'd an Office annexed thereto. In the same Manner, the Bishops formerly usurp'd a Lay Jurisdiction in this Kingdom; and were Judges in Trials of Criminal, as well as Civil Matters. [*Vid. Concil. Brit. 182. Anno 693. vid. etiam Leges Ethelstani.*]



on the King's Part, and several Judges and Doctors of Law ; who at the First Meeting could come to no Resolution ; because the Judges of the *Salick* Law, were unacquainted with the Course of the Ecclesiastical Courts, which proceeded according to the *Roman* Law : This oblig'd the King's Ministers to appoint another Meeting at *Orleans* ; where, besides the Judges, several Doctors of Law, both of that Province, and the *Gastinois*, were order'd to attend. And after all, it ended in a *Duel* between the Witnesses.

THIS Piece of History, shews, the *Roman* and *Salick* Laws, were at that time both in Force ; that the Church obey'd the *Roman* Law ; that there were Persons, who made it their Business to read Publick Law-Lectures ; and that some of them then lived in *Orleans* : That the Prince's Ministers, were Presidents of the Court ; and that sometimes, the Witnesses were order'd to end the Dispute by *Combat*.

WHAT I have hitherto treated of, is what I call the *Antient French Law*.

*The New  
Law.*

IN order to understand, how the *New Law* was modell'd and introduc'd, we must first examine, how the *Old* was reduced into

into Custom; and how the Study of the *Roman* Law, came to be revived. The Origine of all Customs is obscure; because they differ from Laws, only in not being committed to Writing: So that if ever they are put into Writing, 'tis not till after they have been establish'd by long Practice. But there is a particular Reason, why the Origine of the *French* Customs is difficult to be traced; (*viz*) because they first grew into Authority, in the Tenth and Eleventh Centuries; which is the darkest Period of Time in all our History. But this is what I Conjecture.

About the End of the Second, and Beginning of the Third Race of our Kings, both *Italy* and *Gaul* fell into Anarchy, and a General Confusion. Those Troubles were first occasion'd, by the unhappy Division between the Sons of *Louis the Debonair*; and were greatly increas'd by the Hostilities and Ravages of the *Hungarians*, and *Normans*, who gave the final Blow to the poor Remains of the *Roman* Spirit and Customs.

Troubles of  
the Tenth  
Century.

BUT this Misfortune, was carry'd to the utmost Extremity by Private Wars, not only betwixt the Dukes and Earls, but generally, all that had any Castle  
or

or Place of Strength for Retreat: For every Man appear'd in Arms; even the very Bishops with their Clergy, and Abbots with their Monks, to secure themselves from being Plunder'd; when they found their Prayers and Ecclesiastical Censures ineffectual.

THESE Bickerings were agreeable to the Antient Customs of the *Barbarians*; the Seeds of which, appear in their very Laws: For besides the *Duel*, one of their ordinary means of Decision in doubtful Cases, they encourag'd the Law of deadly *Feuds*; which allow'd the Kindred of the Deceas'd, to kill the Murtherer where-ever they met him; except in certain Places, as \* the Church, Royal Palace, Publick Assembly, the Army, or in his way to any of them: For upon those Occasions, the Persons liable to this Revenge were protected.

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\* *Homo fideiſus pacem habeat in Eccleſia in domo ſua, ad Eccleſiam eundo, de Eccleſia redeundo; ad placitum eundo de placito redeundo, qui hanc pacem effregerit & hominem occiderit, novies xxx. ſol. componat. Si vulneravit, novies xii. ſol. componat ad partem Regis.* [Add. ſapientum Leg. Priſonum, Tit. 1.]

THUS

Thus one Murder, tho' accidental, often produc'd a Train of many Murders: And 'tis likely, that this was the Reason, why the Law did not inflict the Punishment of Death upon Murderers; but only a Pecuniary Mulct, or rather Costs and Damages, which were call'd Compositions: For it was left to the Choice of the Kindred, either to revenge themselves by the Death of the Murderer, or be satisfy'd with a Fine. However it was, 'tis certain Family-Quarrels were universally established in *France*, in the Tenth Century.

As it is difficult to bring to a due Temper, the Minds of a People once exasperated; all that the Zealous Endeavours of the Church-Men, and best of Princes could at first do, was only to obtain a Cessation of Arms for certain Days; that is, every Week from *Wednesday* Evening, to the *Monday* Morning following: During which time, all Acts of Hostility were forbidden. Besides, some sorts of Persons were never to be ill-treated; as Priests, Pilgrims, and Day-Labourers, upon Pain of Excommunication: And this is what they called *God's Truce*, which was since confirm'd and enlarged.

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ONE may easily imagine, that during these Troubles, Ignorance and Injustice insensibly abolish'd the Antient Laws; and that being much disregarded; they grew out of Knowledge. Thus the *French* fell again into almost the State of *Barbarians*, who have as yet, neither Laws nor Civil Government: Nay, in this respect, they were more unhappy, in having retained some Remembrance of Arts; which they chiefly employed in Forging Arms, and Building Fortifications: So that they had many more ways of doing one another Mischief, than mere Savages have. They were more ignorant of Good than Evil; and had all the Ferocity of their Ancestors, without their open Simplicity and Innocence.

HENCE came our old Fabulous Stories of *Robbers*, that insulted the Weak and Defenceless; block'd up the Roads, and interrupted Trade and Commerce; and of *Knights-Errant*, who went up and down in defence of the Innocent, and to succour Distress'd Damsels. But methinks, the Authors of these Romances, were not guilty of any Novel Inventions; since they only copied the real Characters of those Times, embellishing them with Giants, Conjurers and Fairies. BUT

BUT notwithstanding this Confusion, there still remain'd some Forms of Justice; for all Disputes were not determin'd by Force. The *Nobles* and *Roturiers*, or *Plebeians*, were under distinct Jurisdictions. I use those Appellations, tho' of later Date, because the Degrees were then known, tho' not the Names: And I place the Peasants, Artisans, and the rest of the Freemen and Vassals, which compose the Body of the Common-People, under the Denomination of *Roturiers*. These were judged by the Nobles, that is, the Knights, and other Men of Power, who began about this time to erect themselves into Lords, and usurp'd the Publick Authority; of which, they had before, at most, but the executive Part: For as long as the Royal Power was in its full Meridian, particularly in the Line of *Charlemagne*, there was no other Lord but the King; nor any Justice administred but in his Name, or of those put in Authority under him. But in the troublesome Times, every Man took upon him the Prerogative of judging, as well as of making War, and raising Taxes upon the People.

THE Foundation of this Incroachment, was, in all likelihood, owing to the Domestick Power over Vassals: For *France*

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was

was still full of that sort of Vassals, who were accounted Parcel of the Lord's Estate and Inheritance; and it was no hard Matter, in respect of them, to change their Private into Publick Authority. I am of Opinion, that many Freemen were confounded with these Vassals; either by their Consent, in order for Protection in this time of General Hostility, or by downright Force: For in the Capitulars, there is frequent mention made of the Oppression of Free Poor Men. The Ringleaders of this Usurpation, were, probably, the *Earls*; that is, the Governors of Considerable Towns, who were before, in right of their Offices, invested with a Power of Jurisdiction.

THESE Lords, from what Spring soever their Power flow'd, administer'd Justice, either in Person, or by Officers chosen out of their own Domesticks: Their Stewards were made *Seneschals*; their Intendants and Receivers, *Bailiffs* and *Provosts*; and their Footmen, *Serjeants*. Nay, in looking farther back, we shall find, that the Seneschal and other Officers, were not only Domesticks, but sometimes Slaves; for the *Salick* Law, amongst those Slaves valued at a certain Rate, names the *Mayor*, *Cup-bearer* and *Mareschal*; and the German Law, the *Seneschal* and *Mareschal*: But these

these Names were not given to Publick Officers, till the Third Race of our Kings.

THIS Authority was Sovereign; and Justice render'd in a Summary Way. The Penalties they inflicted, were Cruel: For it was common to put out \* Fyes, and to cut off a Foot or a Hand: Whence it is, that the Acts of those Times so frequently mention *Mutilation*; and it seems too, that these Punishments were Arbitrary.

THESE Nobles, who thus sat in Judgment upon the *Roturiers*, were subject also to the Judgment of their Superiors: A *Knight* or *Castellan*, for Example, was subject to the Jurisdiction of that *Earl* whose Vassal he was; and the Earl, in order to Judge the Knight, summon'd the Peers of his Court, who were Knights, Vassals of equal Rank among themselves, and the Person under Prosecution. The Earl himself, was one of the Peers of his Lord Paramount's Court; either an *Earl* of greater Power, a *Duke*, or a *Marquiss*: And this Subordination, was observed from the

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\* *Interdico. etiam ne quis occidatur vel suspendatur pro aliqua culpa, sed eruantur oculi, & abscindantur testiculi, vel pedes vel manus ita quod truncus vivus remaneat.*  
[Vid. Leg. Gulielmi Conquestoris.]



Peasant to the Prince ; for the King's own Court, was made up of the Peers of *France*, his chief Vassals.

BUT this Order was not always observ'd, for some of the Nobles, knowing their own Strength, refus'd to obey their Chiefs, who had no other way of doing themselves Justice, but by Force of Arms. The King himself, was many times forc'd to make War, not only against some Peers of *France*, but other inferior Lords. The Abbat *Suger* tells us, that *Louis the Gross* sent an Army against *Bouchard de Montmorency*, in favour of the Abbat of *St. Dennis* ; that he Besieg'd *Gournai*, and took it by Storm ; that he Defeated the Lord *Puisset en Beauffe* ; and at last subdued the Lord of *Montlebery*, who had tir'd out his Father, *Philip the First*, and even stopp'd his Communication between *Paris* and *Orleans*.

ANOTHER way of composing Differences between Great Men, was Arbitration, especially when the Church was concerned : And the Writers of that time, as *Fulbert* and *Ives de Chartres*, frequently mention those Conferences. It seems, that before the Degrees of Subordination among Great Men were settl'd, every one look'd upon him-

himself as a Sovereign, whose Disputes were not to be ended but by Victory, or a Treaty of Peace. This irregular way, of doing Justice, and this Usurpation of New Jurisdictions, very much contributed towards those Customs whose Origine we are looking after : But several other Rights, introduc'd in these times, had a considerable Share in them. *Fiefs*, \* which before were only Grants for Life, became Perpetual and Hereditary. And to these times of Disorder, are justly ascribed, the Source of the greatest Part of those Services, due from the Tenant to his Lord ; which, 'tis believed were settled by Private Agreement or Usurpation.

When Feuds or Fiefs became first Hereditary.

INDEED, there is no likelihood, that the People should voluntarily invest particular Great Men with so many Rights, prejudicial to their Common Liberty, as are mention'd in most of our Customs ; many of which are still in Force, as in passing of

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\* When *Hugh Capet* usurp'd the Kingdom of *France*, to fortifie himself, and draw all the Nobility to his Faction; he granted their *Feuds* to them and their Heirs for ever ; this was the Beginning of Hereditary *Fiefs* : And *William the Conqueror* brought the same into *England*. [Spelman of *Feuds*.]

Rivers; those Rights call'd \* *Peage*, † *Travers*, || *Rouage*, ‡ *Barrage*, and many others, as \*\* *Gifte*, †† *Past*, ||| *Logemens*,

\* *Peage*.... A Custom or Toll paid for Passage; which the Lords of Mannors have a Right to demand, within their Jurisdictions.

† *Travers*.... Much the same as *Peage*. Cross-Toll, Passage-Toll, or Thorough-Toll; called with us *Toll-Travers*.

|| *Rouage*.... Wheelage, a certain Toll or Imposition upon Wine sold in Grofs, and carried away in Carts: Levied before a Wheel thereof be suffered to stir.

*Droit de* †† *Barrage*.... A Passage-Toll, so call'd from the Bar or Turnpike where 'tis Levied.

\*\* *Gifte*.... Power to lie at the House of a Tenant, Vassal or Subject, in passing along by it.

†† *Past*.... The same to require a Meal or Refection of a Tenant or Vassal.

||| *Logemens*.... An annual Fee due unto some Lords, for the Lodgings their Vassals have in their Castles, in time of War.

Sir Henry Spelman, in his *Treatise of Parliaments*, says, the same Impositions were in use in England, after the Conquest,

and were call'd *Coshering*. In Ireland they were termed *Cuttings*, from the old Word *Tallagium*.

‡‡ *Fourni-*

## *Fourniture*, \* *Courvées*, † *Guet*, and || *Garde* ;  
the sole Right of † *Ovens*, *Mills* and *Wine-*  
*presses* ; the Prohibition of selling \* *Wine*,

*Droit de* } † † *Fourniture*.---- A Right of demanding  
Provision, Implements, or Equipage,  
from a Tenant or Vassal.  
\* *Courvées*.---- A Day's Work due from the  
Vassal to his Lord, to be done in Per-  
son, or by his Cattle, Plough or Team.  
† *Guet*.---- Castle-Guard or Ward, where-  
unto the Vassals of Lords that have  
Castles, are bound in Time or Expec-  
tation of War.  
|| *Garde*.---- The Wardship of Lands, due  
to the Lord of whom they are held.

*Bannalitez* { *des fours.*  
*des moulins.*  
*des pressoirs.* } † The Royalty or Sove-  
reign Power of causing  
all the Bread to be  
brought to such an Oven  
to be baked ; all the Corn  
to such a Mill, to be  
ground ; and all the Wine  
within such a District, to  
be press'd at the same  
Press ; for all which the  
Lord or Owner of such  
Oven, Mill, or Wine-  
press, receives a certain  
Toll.

*Ban -- a Vin.* \* A Privilege some Lords have, of  
hindring their Vassals to sell their  
Wine, till they have dispos'd of  
their own.

and

and many others of the same kind; which relish very much, either of the Slavery of those on whom they were impos'd, or the Violence of the Imposers.

I cannot say, but they are become Lawful, by Prescription and Approbation of those Princes, who have authoriz'd the Customs: Nay, I am willing to believe, many had a Reasonable Foundation; as, the Re-imburſing a Nobleman the Expence he had been at in building a Bridge or a Causeway; or for retaining some Token of that Servitude, from which he had deliver'd his Subjects. Many of them, are the very Conditions on which Estates are convey'd, as the † *Cens*, || *Rentes foncieres*,

† *Cens*--- Rent of Assize, Quit-Rent, Old-Rent, Chief-Rent, the first Pecuniary Charge laid on Conquered Lands, as a Sign and Acknowledgment of the direct Seigniorship of him that grants it. This was impos'd by the Captains and Leaders of the *Franks*, when they conquer'd *Gallia*, in imitation of the *Roman Censu*, and is still continued as a Mark of Base or Servile Tenure.

|| *Rentes foncieres*----- These are certain Rents of Accession, or Additions unto the Antient *Cens*, or Chief-Rent; viz. Rent-Service, Rent-Charge, or Fee-Farm Rents.

payable

payable in Money or in Kind ; the † *Cham-*  
*parts*, \* *Bordelage*, and other like Rights.  
 I only say, that those Services or Rights,  
 are for the greatest part, owing to par-  
 ticular Causes ; as is plain from their  
 Names, according to the different Coun-  
 tries where they are in use ; and from  
 certain Fantastical Customs, which even  
 want a Name, and could have no other  
 Beginning but the Caprice of a Master.

As *France* grew more Uniform in its  
 Government, Time swept away ma-  
 ny of these Irregular Customs ; some  
 were entirely abolish'd, others confounded,  
 or mix'd with those, to which they bore  
 the nearest Resemblance ; and in short,  
 such as were more universally receiv'd,  
 were taken into our Common Law.

† *Champarts*.--- Field-Rent. Half, Part, or the  
 Twelfth-part of the Crop due by Bargain  
 or Custom, unto the Lord or Owner of the  
 Land.

\* *Bordelage*.--- Is a Condition by which Lands are  
 held, paying a certain Annual Acknow-  
 ledgment to the Lord or Owner : It is so  
 call'd from the old *French* Word *Borderie*,  
 which signifies a Quantity of Arable, Mea-  
 dow, or Pasture-Ground.

THE

*Rights of  
Corpora-  
tion.*

THE Rights of Communities and Corporations, also introduc'd great Innovations: For 'twas about this time, that the Inhabitants of Towns and Cities, began to unite in Societies, under the Protection of some Great Man, able to skreen them from the Oppression of others; and obtain'd the Privilege of being try'd by their Peers. 'Tis likely, that the first that began this Custom, were the Inhabitants of Episcopal Cities, and other Free-Men: But in time, the Vassals or Servile Tenants, belonging to several Towns and Villages, purchas'd their Freedom of their Lords, at high Rates; in order to have the same Liberty of uniting for their Common Defence, and to have several special Privileges.

IN the time of the *Romans*, there were in *Gaul*, as well as every where else, abundance of Slaves: But the Gentleness of Christianity, and good Usage of the *Germans*, who were unaccustom'd to be waited on, by degrees, render'd their Condition much easier; so that in the Age our Customs were formed, they were in no other state of Bondage, than the Obligation of taking care of certain Lands, and not to dispose of Themselves and Goods,  
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by Will, Marriage, or Religious Vow, as they should think proper. By this means, the Power of the Lords was reduced chiefly to Three kinds of Right ; \* *Poursuite*, † *Formariage*, and || *Mainmorte*, which are very famous Customs : Hence it is, that Vassals are often call'd *Gens de Poursuite*,

\* *Poursuite*.--- A Right of obliging Vassals to dwell upon and cultivate such Lands, these were call'd *Gens de Poursuite* ; because they were liable to be pursued, and reclaim'd by their Lords, where-ever they went, for the Labour and Service due to them.

† *Formariage*.--- The Half or Third, or as the Custom is, other part of a Villain's Substance, payable to his Lord, if he marry a Woman that is Free, or a Foreigner : And this, altho' he has leave to do it ; for otherwise, he loses Sixty Shillings more.

|| *Mainmorte*.--- The Right a Lord has to the Estate of a Villain dying without Heir of his Body, and no Tenant in common with any other of his own Condition. There is a Difference between the *Gens de Poursuite* and *Mainmorte* : The first were born Vassals, and could not by any means become Free, without the Consent of their Lord ; but were like the Roman Slaves, *adscriptos Glebæ* ; the latter were Vassals, only relatively, as they held certain Lands by that Tenure ; but leaving the Land and Goods upon it to the Lord, might make themselves Freemen when they pleas'd.

*Main-*



*Mainmorte*, or *Mortuables*; because they were subject to pay Toll or Tallage to their Lords: They were likewise called, *Hommes* and *Femmes de Corps*, or *Gens de pote*, or *Villains*, from the Villages they inhabited. But Enfranchisements became so common, after the Reign of St. *Louis*, that there are very few Footsteps remaining, of that Rank of Men.

*Ecclesiastical Power.*

A third Cause of Alteration in the *French* Laws, was the Exorbitance of Ecclesiastical Power: Under the *Roman* Empire, the Bishops frequently exercis'd Secular Jurisdiction; and decided Controversies between the People; who, persuaded of their Integrity and Prudence, chose them for Arbitrators. The Usefulness of those Arbitrations was so apparent, that they were authorized by a Law in the *Theodosian* Code, importing, That if one of the Parties, declar'd himself contented, to stand to the Bishop's Decision, the other should be obliged to agree to it, whatever state the Suit might be in.

THIS Law, no doubt, was duly observ'd by the *Gauls*, when, during the Time of *Theodosius*, there were so many Bishops celebrated for Piety and Learning. And tho' the Church's Authority was something

thing lessen'd, by this frequent Change of Masters, and under the Kings of the First Race; yet, the Bishops were ever in great Power and Esteem; not only with the *Romans*, but even with their New *Converts*, over whom they had such an Influence, as to make them tremble at the very Name of *St. Martin*.

IN the Time of the Second Race, we find the Law of the *Theodosian* Code, solemnly authorized: For the Emperor, after enumerating the several Nations under his Dominion, in order to repeal their particular Laws, takes exact notice of the Place from whence that Constitution is drawn; and orders it should be held of equal Virtue with the Capitulars, by Priests as well as Lay-Men, and then sets down the Words of it at Length. This Law therefore, was observed, as long as the Regal Power stood undiminish'd; and the Acts of those Times, make it evident, that Bishops and Abbats, as well as Earls, were sent into Provinces to see the Laws executed; and were admitted into the Councils of State.

THE low Condition Monarchy was then in, rather increas'd, than abated the Ecclesiastical Power: For before these New-coin'd

coin'd Jurisdictions could gather Strength and whilst the ill Effects of these lasted, 'tis natural to suppose, the People were more inclined to submit to the Ecclesiastical Power, than to the Secular ; which was either unfixed, or so new, that the Usurpation was plainly seen through it : Besides, the Laity were so profoundly Ignorant, that they stood in need of Clerks in all their Affairs, not only to debate and resolve Doubts, but even to read and draw up their Deeds and Instruments.

IN a Word, there being no fix'd Rule of Justice left among the Great Men, the Interposition of Bishops and Abbats, became more necessary than ever : So that generally speaking, they were the only Peace-makers ; and summon'd, and made part of those so frequent Assemblies. 'Tis certain, that their thus preserving Peace, and the Injustice of Lay-Judges ; gave grounds to the Bishops, to stretch their Authority so far, that the Laity at length complain'd of, and oppos'd it : And this occasion'd those long and cruel \* Divisions, which distracted *Germany* and *Italy*.

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\* The Faction of the *Guelfs* and *Gibelines*.

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BUT without dwelling any longer upon the History of Ecclesiastical Jurisdiction, I shall content my self, with having observ'd the Changes it brought into the Civil Law ; by enlarging the Canonical, and making it a principal Ingredient in the Composition of the *French* Law.

THIS is what occurs to me concerning the Origine of Customs ; and to close my Conjectures, I am of Opinion, that the Study of the Antient Law, became then discontinued, tho' not the Practice ; which was carried on, without Distinction of Laws, as the People had none left between them ; that it underwent great Alterations by the New Laws, that were established, especially in Relation to Publick Power, and great extent of the Ecclesiastical Jurisdiction : Those Alterations increased by degrees, by reason of the little Correspondence between the Provinces ; and even between all the little neighbouring Districts : For the Division was so wide, that in the Days of King *Robert*, an Abbat of *Cluny*, being invited by *Bouchard* Earl of *Paris*, to settle some Monks at *St. Maur des Fosses*, look'd upon it as a long and fatiguing Journey ; complaining, how great a Hardship it was upon

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on him, to be oblig'd to go in a strange and unknown Countrey.

Thus, the same Causes which brought forth the Customs, gave them a different Form in each Countrey. I call that a Countrey, which, by the Acts in the Reign of *Charlemagne* and his Successors, is term'd *Pagus* ; that is, the District or Territory of every City, govern'd by an Earl, and was generally a Diocess. This Variety of Customs, arose, as *du Moultin* conjectures, from the several Means used in usurping the Publick Power ; from the Difference in the Treaties and Contracts of the Lords between themselves, and between them and the Commons ; from the peculiar Style of each Jurisdiction, and the various Opinions of Judges.

THE state of Hostility those Countries liv'd in, did not a little contribute thereto ; being ever at Defiance with each other : Insomuch, that great part of their Customs consisted of the Laws of War, which had its proper Rules and Maxims. And for this Reason, the Diversity is much greater, in the Provinces subject to different Princes, as those under the Dominion of *England*, and those of *France*. Reasons of State too, often interfer'd ; every Prince being

being desirous to keep his Subjects, in all respects, at as great a Distance as possible, from those of his Neighbours; in order to render a Re-union or Agreement the more difficult. But in those Countries that obey'd the same Sovereign, the Jealousie which is natural among Neighbours, made their Judges and Magistrates affect different Rules and Maxims, and transmitted that Emulation to Posterity.

THIS was the State of *France*, when the Study of the *Roman Law* revived; The Roman Law revived. not of the *Theodosian Code*, which before the Troubles was call'd the *Roman Law*, both in *Gaul* and *Spain*: But known, at this Time, only to a few Learned Men; and afterwards, lay buried in Oblivion, till the Beginning of the last Century. In the Year 1528. it was printed after Three Manuscripts found in *Germany*; and this Edition, is that of *Charlemagne*, which, as I said before, is the same with *Alarick's*. Another Piece of that Code, as it was modell'd by *Theodosius* himself, has been since recovered.

THAT Law, which began to be studied in the Time I speak of, was the same The Justinian Law. that is read now, I mean *Justinian's*; till then, scarce heard of in the *West*:

For when *Justinian* publish'd it, about the Year 530. there were but *Two Provinces* in all *Europe*, that paid him willing Obedience; *Greece*, and the greatest Part of the Countrey under the Governor of *Illyrium*. *Gaul* and *Spain*, had both shaken off the *Roman Yoke*, above an Age before; *Germany* never felt it; and as for *Italy*, the *Goths* held out long against *Belisarius*, and were succeeded by the *Lombards*: So that the *Justinian Law*, was no where in use, but in *Greece*, *Illyrium*, and a small Part of *Italy*, then subject to the *Romans*.

'Tis foreign to my Purpose, to enquire what became of this Law in *Greece*, and the *East*; 'tis sufficient to say, they had no other for Three Ages; and that Three Hundred and fifty Years after, the Emperor *Leo*, Sirnam'd *the Philosopher*, order'd a new Collection of all *Justinian's Books*, which he mix'd and dispos'd after a different Method, dividing them into Sixty Parts; intituled, *The Basilica*. They were written in *Greek*, because the *Latin Tongue* was grown Obsolete, and not understood by those under the Empire of *Constantinople*; altho' they still affected to be call'd *Romans*, (as their Posterity do to this Day :) So that it was *Justinian's Law*,  
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in Substance, which was preserved there, till the Downfal of that Empire.

BUT its Fortune was quite otherwise in the *West*: In *Italy* it maintain'd its Ground; and the *Roman* Law observed there from *Justinian's* Time, was his own, and not the *Theodosian*, as in *Gaul* and *Spain*: Some Proofs whereof, we have in the Epistles of St. *Gregory*, who Flourished under *Mauricius* and *Phocas*; and in the Second Council of *Troyes*, held by *John VIII.* in the Year 878. where *Justinian's* Law, is quoted in the Article against Sacrilege. •

BUT it was very much chang'd, in the Four following Ages, by the Mixture of different Nations, that succeeded in the Possession of *Italy*. The *Lombards* expell'd the *Exarchs* of *Ravenna*, and were again themselves subdued by the *Franks*. After the Line of *Charlemagne* was extinct, *Italy* became a Prey to the *Hungarians* and *Saracens*; who seiz'd upon the Kingdoms of *Naples* and *Sicily*, and maintain'd their Conquests, till driven thence by the *Normans*. In short, the *Saxon* Kings being acknowledg'd Emperors, held the Command of *Lombardy* and *Tuscany*.



AFTER so many Transmutations of People, and Changes of Governments, there were, doubtless, very few that stuck to the *Roman Law*; and the rather, because such as did, were obliged to own themselves *Romans*; a Name, at last, in great Contempt, as appears by *Luit-prand*, who lived in the Tenth Century, and says, that in his Time, *the Name of a Roman, gave the Idea of a Faithless Wretch, without Honour or Courage.*

THE Law of *Justinian*, however, was not so entirely lost in *Italy*, but that they had some Knowledge of it in the Eleventh Century; especially in the Places where the *Greeks* remained longest; I mean, in *Romagnia*, and the Kingdom of *Naples*: This is to be seen, by the Heresie of the *Incestuous*, who in their Marriages, were for following the same Rules as the Law appoints in Successions; and were therefore condemn'd by Pope *Alexander II.* in 1065. But his Constitution quoted in *Gratian's Decree*, mentions only *Justinian's Law* in General, without naming either \* *Code* or

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\* In the References made use of by Civilians, *Apud Justinianum*, it denotes the Institutes: But if the Code or Digest be referr'd to, they are either named, or express'd by these Abbreviations, C. ff.

*Digest,*

*Digest*, and cites only a Passage of the *Institutes*.

ABOUT Fifty Years after, a German, call'd *Irnier* or *Warnier*, who had spent some time in Study at *Constantinople*, began publickly to teach the Laws of *Justinian*, at *Bologna* in *Lombardy*; and the Occasion was this: *Irnier* taught the Liberal Sciences at *Ravenna*, when a Dispute arose between those of the same Profession, about the proper Signification of the Word *As*: They search'd the Books of the Civil Law for it; and liking them, resolv'd upon a closer Application to the Study of them. So that *Irnier*, who came to *Bologna*, upon the Dispute concerning the Word *As*, began there to read Lectures upon it, in 1128. according to the Tradition of that School.

He first took in hand the *Code*, then the First Part of the *Digest*; after that, the Last, call'd the *New Digest*: Then he found out the Second, call'd the *Infortiat*; and last of all, the *Authentiques*. This is what the Cardinal of *Ostia*, and *Odofredus*, Disciple to *Azonius*, whose Master *Bulgarus*, was One of *Irnier's* Four Chief-Scholars, report of him. So that he began Teaching, of his own Authority, which

is no Argument, but that he might be afterwards Licensed by the Countess *Maud*, as the Abbat of *Uspreg* says; or the Emperor *Lothair* the Second, as is more generally believed.

SOME little time after, about the Year 1137. *Amalfi*, in *Apulia*, being taken by the Emperor *Lothair*, and Pope *Innocent II.* assisted by the *Pisans*, from *Roger King* of *Sicily*; a Manuscript Copy of the *Digest* was found among the Plunder, and carried to *Pisa*, and from thence to *Florence*, by *Gino Caponi*, when he made himself Master of *Pisa*, in the Year 1407, This is what they call, the \* *Florentine Pandects*, which awaken'd the Study of the *Justinian Law*; and has ever since been reckon'd the most Authentick Copy.

THEY had many Tokens, which discover'd them to be written by the Hand of a *Grecian*; besides, the Province where they were found, was that, wherein the *Greeks* maintain'd themselves longest in *Italy*.

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\* See *Francis Torellus*, in his Preface to the *Florentine Pandects*.

THE first Interpreters, upon the reviving of the *Roman* Law, made only a few Glosses, References, and Concordances, as the *Greeks* had done, upon the *Βασιλικά* : But they had this great Advantage, of having receiv'd the *Roman* Law from their Fathers, by Tradition ; whereas, it had been so long disused in the *West*, that it was almost unintelligible to the *Latins*, from whom it originally came : So that judging it impossible, as well as unprofitable, to arrive at the true meaning of the Text, they were satisfied with such Consequences as could be drawn from it ; and Study'd it after a Scholastick Method, full of *Sophistry* and *Chicane*, as they did the rest of the Arts and Sciences.

IN these early Times, the Study of the *Justinian* Law came into *France*, and was publickly Profess'd and Taught, at *Montpellier* and *Tholouse*, before the Foundation of those Universities. An Attempt was also made, to teach it at *Paris* ; but Pope *Honorius* the Third, forbid it by a Decretal, which deserves Examination.

Obiit.  
1227.

THE

THE Substance of this † Decretal, is, that tho' the Church does not refuse the Assistance of such Secular Laws, as tread in the Paths of Equity and Justice; nevertheless, because the Laity, both in *France* and some of the Provinces, make no use of the *Roman* Law, and that there are very few Ecclesiastical Cases, but are sufficiently provided for in the Canons; to the End therefore, that every one might apply himself more closely to the Study of the *Holy Scriptures*, the Pope forbids every Man, to Teach or Learn the Civil Law at *Paris*, or in the Neighbourhood, under Penalty of being render'd incapable to Plead at the Bar, and Excommunicated by the Bishop of the Diocese.

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† This Decretal was called *Super Specula*. Monsieur *Claude Joseph Ferrière*, in his History of the *Roman* Law, spends a whole Chapter in shewing, that the Study of the Civil Law at *Paris*, was not forbidden, either before, by, or since that Decretal; which he proves, had a view only to Ecclesiastical Persons: And that the Edict of *Blais*, made upon the Foundation of that Decretal, was, upon a Representation to *Louis XIV.* of the Inconveniencies that attended, Repeal'd, so far as it related to the Study of the Civil Law in *Paris*.

I shall

I shall not take upon me to determine, how far this Decretal ought to have been obey'd in *France*; whether it were Obligatory to the Laity, or whether that be the true Reason, that there have been no Professors of the Civil Law to this Day in *Paris*: My Intention, is only to take notice of some Things therein mention'd, conducive to the Design of my History: As, that the Ecclesiasticks gave the Preference to the Canon, before the Secular Law; that they and the Laity, were govern'd by different Laws, in the Thirteenth Century; and from the Words in the Decretal, it may be safely concluded, that all Ecclesiastical Causes, for which the Canons had made no Provision, were decided by the *Roman Law*.

As for the Laity, 'tis said, they made no use of it, being guided by such Customs as I have already mention'd; for altho' the *Roman Law*, was the Foundation and Chief Part of those Customs, yet it was so Interwoven, as not to be distinguish'd.

BUT what is most worthy Observation in this Decretal, is, the Name of *France*, which is there used in a very confin'd Sense;

Sence; and, if I am not mistaken, for the Isle of *France* only; so that by the other Provinces, we are to understand *Normandy*, *Burgundy*, and the most Northern Parts of the Kingdom: From whence it may be inferr'd, that since that Time, the Countries govern'd by Custom, have been distinguish'd from those that follow'd the Written Law.

Thus the Law of *Justinian* was restor'd to the World; became more Famous in *Italy* than ever; and spread over the rest of *Europe*, where it had never before been heard of: And indeed, 'tis very surprizing, that Books compiled at *Constantinople*, Six hundred Years before, and sunk into Disuse there, being partly abolish'd by the *Barbarians*, should meet with so much Regard and Countenance, in Countries that were no part of *Justinian's* Dominon, as *Spain*, *France*, *Germany* and *England*; without the Sanction of Ecclesiastical or Secular Powers: And that it should be Customary to call them, the *Written, Common, Civil*, and by way of Excellence, *the Law*; as if there had been none other Considerable. However, this is what I am apt to believe, might be the Cause of so strange an Event:

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IN the utmost heighth of *Barbarism*, some smattering of the *Latin* Tongue, and Footsteps of the *Roman* Customs, were still preserv'd. *Glaber* the Monk, who flourish'd in the *Eleventh* Century, calls the Christian Countries, at that time, the † *Roman World*, and the rest *Barbarians*. 'Tis true, the *Franks* and other Conquerors, had a great Aversion and Contempt for all that then called themselves *Romans*; that is, the Subjects of the Empire of *Constantinople*: But still, they had a confused Notion of the Excellence of the *Roman* Manners and Actions, especially of the Wisdom of their Laws; notwithstanding, its Books were very little known, and hard to be procured. The Law of *Justinian*, therefore, met with good Reception, as being that of the Antient *Romans*; for the Wisest in those Days, had not Skill enough to distinguish it from the true *Roman* Law, *i.e.* the *Theodosian* Code; nor to know when *Justinian* liv'd, and of what Authority his Laws were: The Name of the *Roman* Emperor was all they regarded.

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† *Orb̄s Romanus*,

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MOREOVER, these Laws were of general Use and Advantage; for therein, the Principles of the Civil Law were well established; not only in Relation to the *Romans*, but all other Nations: For there is scarce any Maxim, in either Law of Nature or Nations, but may be found in the *Digest*; besides an infinite Number of accurate Decisions, in particular Cases. But it was chiefly of service to Princes, whose *Prerogative*, as therein extended in its full Dimensions, free from those fatal Blemishes it had suffer'd in the foregoing Ages; nay, it furnish'd them with Matter to build very high Pretensions. The Emperor of *Germany*, as some Doctors explain'd this Law to him, had a Right to Universal Monarchy; and others said, that Kings were Absolute Emperors, within their own Dominions.

IN short, the whole Design of these Laws, was to render Mankind more Candid and Humane, more fit for Society, and obedient to the Supream Lawful Powers; and to extinguish all † Unjust and

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† Yet *Grotius*, in his Book *de Bello Gothico*, proves the Laws of the *Goths* and *Vandals*, to be more Equitable and Just than those of the *Romans*, in *Justinian's* Time.

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Tyrannical Customs, introduced by the Barbarous Nations. 'Tis not therefore so much to be wonder'd, that this Law, first brought to Light by the Curiosity of Learned Men, should, through the Interest of Princes, and Approbation of the People, insensibly establish it self.

It met, however, with a different Reception, according to the Disposition of the People : The *Italians* eagerly embrac'd it as soon as it appeared, they were but just delivered from the burthensome Impositions of the *Germans*, whom they look'd upon as *Barbarians*, (tho' no better themselves ;) and labouring to restore the *Roman* Name, and the Memory of their Ancestors, or rather of the Antient *Italians* ; they were, besides, no longer apprehensive, by becoming *Romans*, of being subject to the Emperor of *Constantinople* ; for about that time it was taken by the *French* : And as the *Eastern* and *Western* Empires, were in the Hands of those call'd *Franks* or *Latins*, to distinguish them from the *Levantine*s and *Grecians* ; this contributed very much to the Propagation of the *Roman* Laws throughout their Dominions.

Consequences of the Study of the Roman Law.

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BUT, notwithstanding this, 'tis certain, the Study of it in † *Germany*, was never heard of till towards the Fifteenth Century ; but its Authority quickly spread over all that Countrey, being *then* call'd the Empire.

BUT to confine my self within *France* : It has ever had the Force of Law, where the *Roman* Power took deepest Root ; as, in *Languedoc*, *Provence*, *Dauphiné* and the *Lyonois* ; those Places having been the first conquer'd by the *Romans*, and the last by the *Franks* ; and the greatest Part, acknowledging at that time, the Emperor of *Germany* as their immediate Sovereign. Besides, their bordering upon *Italy*, gave them better Opportunity than they could otherwise have had, to study the *Roman* Law : For this Reason, altho' several Customs still remain in those Provinces, different from this Law, yet they are not directly contrary, nor of any great Extent.

ON the other hand, the Customs prevail in the rest of *France*, and the Ro-

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† Herman. Coringus, *de Orig. Juris German.*

*man* Law is not there observed, in all those Cases where Custom has made other Provision, which are very numerous.

THIS is the Difference between the *Customary* Countries, and those which observe the Written Law. Whether the *Roman* is the Common Law, in the Countries governed by Custom, in Cases omitted by the Customs, has been a famous Question, argued *Pro* and *Con* by the Two Presidents, *Lizet* and *de Thou*; and I have not heard it is yet decided.

THE Study of the *Justinian* Law, introduced great Alterations in the *French*, consisting only at that time of certain Customs: For the *Roman* Law, as little as it was understood, was thought so necessary, that no Body who had not study'd it, was employ'd, either in Judging, Pleading, or drawing up Contracts: Insomuch, that all the Officers belonging to the Courts of Justice, even the Attorneys, and Notaries, were in those early Times, *Graduates*, and consequently *Clerks*; for as yet, the Laity had no Taste of Learning: These, thinking to make themselves more necessary, or perhaps more correct than their Predecessors, changed all the Forms of the Publick Acts, which till then were

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In a plain easy Style, except some sorry Preambles used in all Instruments of the same kind; but from the Year 1250. or thereabouts, they are clogg'd with an Infinity of Clauses, Conditions, Restrictions, Renunciations and Protestations, in order to exclude the most General Rules; and often such, as could in no wise affect the Parties: In short, they frequently inserted, what would have been clearer and better understood, if left out.

THE Spirit of Distrust, at that time very prevalent, and doubtless the Effect of the late Dissentions, made every one fond of these *Canteles*, as they are call'd; and he that used most, and the longest, was accounted the ablest Lawyer. The same Humour infected the Proceedings of the Courts of Justice: Formerly, Judgments were pass'd summarily, and with little Ceremony, by the Lords and others most knowing in the Customs; but since, have been loaded with so many Forms and Delays, as not to be ended without the Assistance of Clerks and Doctors: Hence are sprung Deputies, Bailiffs, Stewards, and other Judges of the Long-Robe.

YET

YET, the Study of the *Roman Law*, had its Advantages as well as Inconveniencies; It greatly soften'd the Rigour of the Customs, and establish'd sure Maxims, by arguing from one thing to another; which is certainly the Reason, why we have left off quoting, and even reading the Ancient Laws of the *Barbarians*, that were still in Practice, when the Study of the *Roman Law* first began, according to *Otho de Frisingue*; who reports, that in his Time, the Nobility of *France* follow'd the *Salick Law*: And the Author of the Second Book of the *Press*, says, that in *Italy*, Causes were determin'd either by the Laws of the *Romans* or of the *Lombards*, or by the Customs of the Kingdom; that is, as 'tis understood, the *German Empire*.

SINCE that time, the Ancient Laws have been laid aside, and in the Reign of *Philip of Valois*, when it was pretend-  
ed the *Salick Law* was of such Service, for the Succession of the Crown; the Text was not cited, as of a Written Law, but the Force of it was urg'd, as of an Inviolable Custom: Nay, the very Name of *Salick Law*, was not made use of; and, I think, *Claudius de Seissel*, Bishop

of *Marseilles*, in the Reign of *Louis XII.* was the first that mention'd it. So that the Customs received a notable Alteration, as well by the new Forms of Practice in Business and in Judgments; as by the new Maxims and Rules which were about that time first admitted, or at least explained. And this Mixture of the *Roman Law*, with the Customs, makes up the Body of the Laws used in *France*.

Customs  
first re-  
duc'd into  
Writing.

It remains now, that I explain how this Law has been transmitted to the present Age; *viz.* how the Customs were reduced into Writing.

THE Diversity of Customs proved very troublesome, after the Provinces were united under the King, and Appeals to the Parliament became frequent: For as 'twas almost impossible the Judges of Appeal should be acquainted with all particular Customs, when they were not committed to Writing, by any proper Authority; there was a Necessity for the Parties agreeing what those Customs were, or making proof thereof by Witnesses.

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By this means, all Questions in Law, were reduced to Facts; upon which, Inquiry was to be made \* *Par turbes*, a very expensive and tedious Method, and yet not a sure one, to come at the Truth; since it depended greatly upon the Influence and Industry of the Parties, and Experience and Integrity of the Evidence: Thus, sometimes, equal Proof was made of two Customs directly opposite, in the same Place, and upon the same Fact.

It is easie to conceive, how far this Convenience, of shaping the Law to one's own Purpose encourag'd Perjury; and how disagreeable the Study of the Law was, since, after a Man with great Pains and Application, had made himself Master of the Written Law, or by Reflection, drawn good Consequences from its established Rules, all his Arguments and Authorities might be defeated, by pleading a Contradictory and often a False Custom.

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\* When the Custom, or Explanation of a Custom was in doubt, the Parties concern'd, were oblig'd to make it good by Twenty Witnesses, at least: This Enquiry was called, *Enquête par turbes*; from *Turba*, a Troop or Company.



AND, indeed, the Customs themselves were render'd very precarious, by the Corruption of Bailiffs and other Officers, who to serve their own Ends, often laid them aside; and the Presumption of others, who inclin'd more to their own headstrong Opinions, than to the Tradition of their Forefathers. Thus *Peter de Fontaines* complains, that in the Time of *St. Lewis*, his Countrey was in a manner destitute of all Customs, and scarce any one could be ascertain'd by the Knowledge of Three or Four Persons.

THE Study of the *Roman Law*, I believe, very much contributed to this Uncertainty; for it was in universal Credit; and tho' little understood, nor lawfully authoriz'd, yet every one followed what he best approved, or was most able to understand. Besides, those who had the greatest Insight in the Law, had not always the most compleat Knowledge of the Customs, which was not to be attained without long Practice; yet their Opinions were very much regarded and followed, in the Decisions of Causes, and many of them were received as Customs, and so remain.

WRI-

Writing was the only means of fixing the Customs, notwithstanding their Variety, to some Certainty: This Work was therefore undertaken, so soon as the Troubles which had caused it were over, and Time had somewhat fix'd them; which was about the End of the Eleventh Century: And tho' we have very few Remains of those old Law-Books, yet, I presume, that whatever appears to have been done in one Place, was practised in others; and that Time and subsequent Works of the same Nature, have swallowed up those that were more antient: The oldest I know of, are the Usages of *Barcelona*, authorized by Earl *Raimond Berenger* the Elder, in 1060. and the *Fors* or Customs of *Bearn*; which are, at least, of equal Antiquity, being ratified by Viscount *Gaston IV.* in 1088.

ABOUT the same time, that is, in 1080, *William the Bastard*, having conquered *England*, assembled the Noblest and Wisest Men of each County, and upon their Testimony, commanded the Customs of the *Anglo-Saxons*, and of the *Danes* that were mixed with them, to be digested into Order, which was

accordingly done, (by the \* Archbishop of York and Bishop of London, in their own Hand-writing.

UNDER this Head of Digested or Written Customs, I rank the Books of the *Fiefs* of the *Lombards*, compiled about the Year 1150. by Two Consuls of *Milan*, and intituled, *Customs*; but are in reality only Antient Usages, collected by experienced Judges: Of this kind also is *Speculum Juris Saxonici*, the oldest Original of the *German Laws*, tho' the Learned say, it was not wrote till about 1220.

NEAR the same Time, they began to write their Customs in *France*. These Writings were of Three Sorts; the particular Charters of Towns, the Customaries of Provinces, and Treatises of Practitioners: Let us examine each separately.

Charters  
and Cu-  
stoms of  
Cities, &c.

TOWARDS the close of the Twelfth, and during the Thirteenth Century, they wrote the Rights of several Corporations,

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\* *Alfredus autem Eboracensis Archiepiscopus, qui Regem Willielmum coronaverat, & Hugo Londiniensis Episcopus, per preceptum Regis scripserunt propriis manibus omnia quae praedicti jurati dixerunt.* [Chron. Ecclesiae Lichfield.]

whose

whose Charters, I am perswaded, were the Originals of their Customs. I shall speak only of those I have seen, either intire, or recited in part by our Historians; because they will suffice to form a Judgment of the rest.

THE oldest is the Charter of the Corporation of *Beauvais*, granted by *Louis the 1<sup>st</sup> Young*, in 1144. containing an express Account of several Customs relating to the Jurisdiction of the Mayor and Common-Council: It is nothing else but a Confirmation of those Rights before given by *Louis le Gros*; but there is no mention of the Letters Patent, and therefore probably, the first Grant was only verbal. After the same manner, they pretend *William Talvas*, || Earl of *Ponthieu*, made *Abbeville* a Corporation, about 1130. altho' the Charter of *John II.* which they shew, bears Date only in 1184.

I find also, in 1173. \* *Henry I. of England*, gave License to the Inhabitants of

† Or *The Devout*.

|| History of the Earls of *Ponthieu*.

\* Chron. *Bourdeg*.

*Bourdeaux*, to choose a Mayor. In 1187, *Hugh Duke of Burgundy*, granted the same Rights to \* *Dijon*, that were enjoy'd by the Corporation of *Soissons*; which of Consequence are more ancient, tho' their Charter have no Date. That of the County of *Beaune*, is dated in 1203. That of *Bar sur-Seine*, in 1234. and that of *Semur*, in 1276.

I could mention the Charters of several other Places of Note. Of this nature I take the Establishment to be, made at † *Rouen* in 1205. between the Clergy and Barons of *Normandy*; containing several Customs relating to the Ecclesiastical Jurisdictions, certified by Men of Experience. The Charter of *Rouen*, given by *Philip the August*, in 1207. confirming the *Antient Rights and Privileges* of that City, which relate to the Corporation and Traffick. Lastly, The Institution of the Corporations of *Rouen* and *Falaise*, and that of *Pontbeau de Mer*, which is without Date, (but seems to be the more Antient,)

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\* Collection of Pieces relating to the History of *Burgundy*, by *Peyrat*.

† *Du Chesne's* History of *Normandy*.

and regulate the Election and Power of the Mayor and *Échevins* or Sheriffs.

BESIDES these Charter-Deeds belonging to particular Cities, the Customs of whole Provinces began about the same time to be put into Writing; which, is the *second sort*. I took notice of: Such were the Ancient Customs of *Champagne*, published by *Pitbon*; those of *Burgundy*, which are in *Du Puy's* Collection; the Notorious Customs of the † *Chatelet*, published by *Brodeau*; consisting of the Resolutions of the Inquiries *Par surbes*, from the Year 1300. to 1387. the Ancient Customs of *Normandy*, and of *Amien*; the the Ancient Usages of *Amiens*, and many others still to be seen in Manuscript.

BUT the most Considerable, are those of *St. Louis*, given us by *Monsieur du Cange*; containing the Customs of *Paris*, *Orleans*, and *Amien*, as they prevailed at that Time: Wherein, 'tis to be observ'd, the Word *Établissement*, is Synonymous with *Edict* or *Ordonnance*. This appears

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\* The *Customaries*.

† The Town-House or Guild-Hall at *Paris*.

by

by *Peter de Fontaines*, who lived at that Time, and in his Translation of a Law taken out of the *Digest*, calls the *Prætor's* Edi& a *Ban ou Etablissement*. I rank them, however, among the Customs, because the Preface expressly mentions their being made to confirm Good Usages and Antient Customs, with some Improvements extracted from the Laws and Canons : They were made by St. *Louis* in the Year 1270. before his Expedition into *Africa*.

The Writings of  
Antient  
Lawyers.

THE Third sort of Writings, which contain much the same Things, and may very well pass for the Originals of our Customs, are the Works of able Men, composed about that Time, for the Benefit and Instruction of others : As, The Advice of *Peter de Fontaine*, put out by Monsieur *du Cange* ; The Book inscribed to Queen *Blanche*, supposed to be by the same Hand ; The Customs of *Beauvoisis*, written by *Philip de Beaumanoir*, in 1285. The *Rural Summary*, by *Boutelier* ; the Great *Customary* made in the Reign of *Charles VI.* and the Decisions of *John de Mares*, published by *Brodeau*, together with the Notorious Customs.

As

As I am of Opinion these Records were the Plan, upon which our Customs were afterwards more solemnly reduced ; it may not be improper to give some Account of their Contents.

THE Words, *Usage* and *Customs*, *Immunities* and *Customs*, *Franchises* and *Privileges*, are not Synonymous, as some have thought. The Word *Customs* sometimes signifies *Usages*, and in that Sence is directly contrary to *Immunities*, which denote the Privileges of Corporations, or whatever relates to Publick Right : Sometimes *Customs* are opposed to *Usages*, and then they signifie the particular *Rights* or *Laws* of a Place, but more especially, the *Services* due from the Tenant to his Lord ; whereas, *Usages* signifie General Rules applicable to all alike. *Franchises*, are chiefly Exemptions from reserv'd Services, (as *Mainmorte*, *Formariage*, &c.) whereby Vassals enjoy'd the Benefit of the Common Law ; and *Privileges* are Rights granted to Freemen, beyond what the Common Law entitled them to ; as *Common* or *Town-Field*, *Running in the Forest*, and *restraining of Causes to a certain Court or Jurisdiction*. 'Tis very probable, however, the Words *Usages*, *Customs*, &c. may



may have been differently taken in different Countries, and I don't pretend to insist, that they are oblig'd to receive them in the same Construction I have given them.

THE Contents of these antient Originals of our Customs, relate chiefly to the New Rights or Rules establish'd during the troublesome Times: First, the Rights of the Prince, Earls, and the rest of the Nobles, with the Jurisdiction of the Lords, and that of the Commons. In the next place, the Right of Fiefs, Tenures in Capite, Bannalities, and other Signioral Rights, (as Gifte, Furniture, Courtoes,) due from the Vassals to their Lords. The Distinction of Gentlemen and Gentlewomen, from Copyholders and Villains, Free or Bondmen. The Right of War, Duel, and Champions, &c.

BUT what they treat of most at Large, is, the Form of Justice, and Method of Procedure in the Lay Court: For they never fail to make that Distinction, because of the Ecclesiastical Power, at that time in the Height of its Pride. So that one may perceive, the Compilers of these Customs, always suppos'd another Law to govern in Matters of Contracts and Successions,

cessions, and did not offer to take notice of any thing but what derogated from the Common Law.

Now I am at a Loss to know what this Common Law should be, unless it were the *Roman*. Indeed they often quote it by the Name of the *Law*, and the *Written Law*. And tho' in those Days, every thing almost was wrote in *Latin*, yet these Customs were in *French*, as treating of Matters which could not be well explained, but in the Vulgar Tongue, and necessary to be understood by every one.

In these Writings, one may observe the Changes our Law has suffer'd: The oldest retain much of the *Barbarian Severity*, frequently mentioning, *Wounds* that draw Blood, *Mutilations*, *Fines* upon *Forfeitures*, *Security* or *Safe-Conduct*, and *Breach of the Peace*: But what has been written within these Three hundred Years last past, comes nearer to the *Roman Law*, and that which is now in Use; and treats of *Successions*, *Wills*, *Marriages*, and other *Contracts*, and much about the *Forms of Proceedings*.

I have

I have been the more large upon the Subject of these antient Originals, as being, in the Opinion of the Learned, the best Comments upon the Customs, because they discover their Spirit, and Succession of their Changes.

*Customs reduced with greater Exactness.*

BUT all these Writings could not prevent the Uncertainty of the Customary Law, being either, without Authority, too Old, or too Succinct; wherefore, 'twas thought advisable to make a more Exact and Formal Digestion of the Customs.

THE Project was laid in the Reign of *Charles VII.* who, after he had driven the *English* out of *France*, undertook a general Reformation of every Branch of the Constitution; and among the rest, issu'd a long Edict, dated at *Montil-les Tours*, in 1453. the Hundred and twenty third Article of which, declares, That thenceforward all the Customs of the Kingdom should be put into Writing, and agreed to by the Practitioners of each Place, then examin'd and confirmed by the great Council and Parliament; and that the Customs so written and approved, should be observed as Law, and no others quoted.

*Da*

*Du Moulin* says, the Design was, to jumble all the Customs together, in order to extract one General Law, and that the Writing of each particular Custom, was only Provisional, that the People might have something certain to depend upon, whilst the general Work was upon the Stocks.

It was, in truth, the best way that could be taken to give *France* a Sett of Good Laws : 'Tis what the first Legislators follow'd : And *Plato* says, as in the Beginning, States were form'd out of many Families assembled together for Convenience ; so the Laws were form'd out of the Customs of those Families, of which the Best and most Reasonable were chosen, and by some Wise Man made a Rule for the whole Body ; abolishing some Things of small Moment, peculiar to each Family.

AND the same Method might be practis'd in *France*, considering each petty Province as a Family, in respect of the whole Kingdom. This is what *du Moulin*, who lived near that time, says was intended ; and it seems to be supported by *Philip de Comines*, who represents *Louis XI.* as very desirous of having only one Custom,

stom, one sort of Weight and Measure; and that all the Customs should be registered in *French*, in a Book fairly written. Hitherto, the first Part only of this great Design has been put in Execution, that is, digesting of the Customs; and it was so long a doing, that it was not finish'd in above a Hundred Years after *Charles* the Seventh died.

THE first digested, were the Customs of *Ponthieu*, under *Charles* VIII. and confirmed by him in 1495. There were several finish'd under *Louis* XII. After the Year 1507, the Work was carried on by *Fits*, under *Francis* I. and *Henry* II. and there were still some left undone in the time of *Charles* IX.

THE Number of these Customs, including the *Local*, and Customs of neighbouring Provinces, as the Low-Countries, who copied after *France*, are 285. but reckoning only the Principal Customs of the Kingdom, amount to no more than 60. most of them differing from one another. In the mean time, it was observed, about a Hundred Years ago, many Alterations had crept in, since they were first reduced in the Beginning of the last Century, and that there had been considerable Omissions

sions ; so that many Customs were amended, as those of *Paris*, *Orleans*, and *Amiens*, which was done with the same Solemnity as at first.

IN order to make these Customs better understood, 'tis necessary to be acquainted with the Ceremonies used on the Occasion of their being new-modell'd. In the first Place the King issued his Commission, by Virtue of which, the Three Estates of the Provinces assembled : The Result of the first Meeting, was to order all the King's Judges, Registers, and such as had born that Office, and the Mayors and Town-Clerks, to send in a List or Catalogue of the Customs, Usages and Styles, which they knew were constantly in Practice. The States appointed a Committee to put those Lists into Order, and reduce them into One Volume ; which being read in full Assembly, they agreed to, or alter'd what was proper, and then sent them to the Parliament to be Register'd.

THIS Method is fully explained in the *Verbal Process* of the Customs of *Ponthieu*, which, as I said, were the first digested, and done by the Magistrates of several Places ; the greatest Part of the rest have been reduced by Commissioners from the

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Parliament, viz. such as had presided at the Assemblies of the States; where those Lists of the Customs were read; but 'tis not to be suppos'd they were the Authors, nor that they had time to correct them; That was left to the Practitioners of each Place, who, no doubt, transcribed them from those antient Originals before mention'd: We are not to expect any great Elegance or Method from these Gentlemen, and 'twas impossible to think of Order or Style when they came to be read in the Assembly; 'tis enough things are regulated in Substance; for on those Occasions, every thing is done in haste: No wonder therefore, the Customs are ranged in so ill Order, and so uncorrect a Style, notwithstanding the Commissioners, whose Names are prefix'd, were Persons of great Character and Abilities.

*Laws first called Ordonnances.* I come now to the *Ordonnances*: We call none so, but those under the Third Race; the rest are better known by the Title of *Capitulars*, which make part of what I call the Antient *French Law*.

HOWEVER, the Word *Ordonnance* seems to have had its Origine, from the Regulation made every Year by *Charlemagne*, for the Management of his own Estate and

and Household ; for this Word has been long in use : And in the Time of *St. Louis*, That was call'd an *Ordonnance*, which now is the *Establishment* of the King's Household : Since that, it has been given to all sorts of Letters Patent, by which the King proposes any thing to be generally observ'd.

BUT I see nothing like this, before the Reign of *St. Louis* ; what they give us of his Predecessors, are only Charters of Privileges, and Private Regulations, in favour of Churches, Corporations, Towns or Universities. But it looks as if they did not pass those Acts as Kings, since every Nobleman did the same in his own Mannour ; and the greatest part of their Regulations, having grown into Custom, are inserted in the written Law-Books : For when any new Law was to be establish'd, or important Question decided, the King did it in the Assembly of his Barons ; and the Lords in Proportion, used the same Method with their Vassals : So it was like an Agreement between them all, or a Judgment given by their Advice.

THE Assize of Earl *Geofrey*, is an Example of those kinds of Agreements, being a Regulation made in *Britany*, in 1287.



for the Succession of Noble Dignities. Another Instance is, the antient Regulation of *Philip the August*, touching the Descent of partable *Fiefs*, by and with the Consent of several Lords, whose Names, as well as the King's, are in the Front of it.

As to Judgments, we have the Antient *Arrêts*, reported by *du Moulin*, at the End of his Book call'd *Style du Parlement*; they are indifferently term'd *Edicts* or *Arrêts*; so that the Word *Arrêt* signified only the Result of a Debate.

I fantasie, by the way, 'tis from hence the Practitioners derive the great Authority, they now ascribe to the *Arrêts of Parliament*, considering them as Laws: Besides, before the Customs were reform'd, there was no stronger Proof of any Usage, than the Conformity of several *Arrêts*, which is the Reason, that at the End of the antient Manuscript Customs, we generally find the *Arrêts* of the County or Provincial Court.

To return to the *Ordonnances*: Those of St. \* *Louis* were in so high Esteem, that

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\* See *du Cange's* Notes on the Life of St. *Louis*.  
the

the Authors of the History of his Life, have been at the Pains to recite them : They are upon several Subjects ; as, For the Encouragement of Religion, against *Jews*, Blasphemy, and the Ambition of Church-Men ; For Justice, Of the Duty of Bailiffs and other Officers ; For the Government of the City, against Gaming and Bawdy-Houses, &c. One might also recapitulate the Heads of the *Ordonnances* of the rest of our Kings ; but that would be writing a History of *France*, by the Laws, which is not consistent with my Purpose ; they are to be seen in the Chronological Tables, made of them, at the Beginning of the Conference of *Guenois* : I shall only say, They, in general, treat of Publick Right, and settle the King's Prerogative, and the Power of the Magistrate. From whence it proceeds, there has been a far greater Number of Edicts, since the Accession of *Francis I.* than in all the preceding Reigns ; because, 'tis since that time most of the Subsidies have been levied, and Titular Offices created, in order to make them Venal.

THERE are likewise abundance of *Ordonnances* for regulating the Proceedings and Forms of Justice, but very few of service in the Conduct of Private Life,

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or

or that contain any Maxims or Rules of Law : So that the *Roman Law* is of the same use now, as when the Study of it was first reviv'd ; notwithstanding, there were neither Customs nor *Ordonnances* at that time.

FOR if on the one Hand, it has lost Ground by our rejecting the \* *Senatus Consultum Velleianum* ; yet, on the other, it has gain'd, by Admission of the Edict of † *Second Marriages* : And all the *Ordonnances* have ever been drawn up by Men learned in the *Roman Law*. The most celebrated, are such as have been made

\* The *Senatus Consultum Velleianum*, was a Law to hinder Women being bound for others, *ne pro ullo feminae intercederent* : It is so call'd from *Velleius Tutor*, in whose Consulship, it was made. The use of this Law in *France*, was abrogated by an Edict of *Henry IV.* but some Indulgence of this kind is shewn to the Women of the *Lionnois Forêts*, *Beaujollois* and *Masconnon*, for the Encouragement of Trade.

† The Edict concerning *Second Marriages*, was made to prevent the Wrong that might thereby be done to the Child by the first Husband ; and therefore, the Law is very severe upon such Women, as marry again within the Term of a Year. This is strictly observed in all the Provinces of *France*, where the Written Law takes place, except *Bordeaux*.

in

in the Assemblies of the States, as those of *Moulins* and *Blois*.

THE Parliaments, and other Courts, whose Jurisdiction is Sovereign, because the Prince is supposed to be present, had a Right to examine the Edicts directed to them, and to remonstrate against them, if they thought proper, before they were publish'd; but this is now quite out of use, and they are oblig'd to Register and Publish whatever the King sends them, saving the useless Privilege of Remonstrating afterwards.

THIS is the Best and most Exact History I am able to give of the *French Law*. If any one is inclined to look into these Matters, no doubt, he may find many things that have escaped me; but I shall be highly satisfied, if such whose Profession obliges them to be skill'd in our Laws are encouraged by this Discourse to search more exactly after their Originals.

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